

RSM Richter

Fourth Report of RSM Richter Inc. as CCAA Monitor of Eddie Bauer of Canada, Inc. and Eddie Bauer Customer Services Inc.

RSM Richter Inc.
Toronto, July 21, 2009

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**ONTARIO
SUPERIOR COURT OF JUSTICE
- COMMERCIAL LIST -**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
EDDIE BAUER OF CANADA, INC. AND
EDDIE BAUER CUSTOMER SERVICES INC.**

**FOURTH REPORT OF RSM RICHTER INC.
AS CCAA MONITOR OF
EDDIE BAUER OF CANADA, INC. AND
EDDIE BAUER CUSTOMER SERVICES INC.**

July 21, 2009

1. INTRODUCTION

Pursuant to an order of the Ontario Superior Court of Justice (the "Court") made on June 17, 2009, as amended and restated (the "Initial Order"), Eddie Bauer of Canada, Inc. and Eddie Bauer Customer Services Inc. (jointly, the "Company") were granted protection under the *Companies' Creditors Arrangement Act* (the "CCAA") and RSM Richter Inc. ("Richter") was appointed the Monitor (the "Monitor"). A copy of the Initial Order¹ is attached as Appendix "A".

This report ("Report") is filed by Richter in its capacity as Monitor.

¹ The Initial Order was amended and restated on consent shortly after its issuance to include provisions requested by counsel to certain landlords and by counsel to the US DIP Lender.

On June 17, 2009, Eddie Bauer Holdings, Inc., the Company's US based parent company, and certain other US affiliates (collectively, "Eddie Bauer US") commenced reorganization cases under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "US Court") (the "Chapter 11 Proceedings"). The Company is not subject to the Chapter 11 Proceedings. A Cross Border Protocol ("Protocol") was approved by this Honourable Court on June 25, 2009.

(Eddie Bauer US and the Company are collectively referred to as the "Eddie Bauer Group". The Chapter 11 Proceedings and the CCAA proceedings are referred to as the "Restructuring Proceedings".)

The primary purpose of the Restructuring Proceedings is to allow the Eddie Bauer Group the opportunity to maximize the value of its business and assets in a unified, court-supervised sale process.

1.1 Purposes of this Report

The purposes of this Report are to:

- a) Provide background information about the Company and these Restructuring Proceedings;
- b) Set out the results of the sale process ("Sale Process") carried out by the Eddie Bauer Group in accordance with a Court Order made on June 29, 2009 (the "Bidding Procedures Order");
- c) Summarize a proposed transaction between the Eddie Bauer Group and Everest Holdings LLC, an affiliate of Golden Gate Private Equity, Inc. (the "Purchaser"), to purchase substantially all of the assets, property and undertaking of the Eddie Bauer Group and to assume certain obligations, including substantially all of the Company's obligations, pursuant to an asset purchase agreement dated July 17, 2009 (the "APA") (the "Recommended Transaction");

- d) Set out the reasons that the Monitor recommends the Recommended Transaction; and
- e) Recommend that this Honourable Court make an order:
 - Approving the APA and the Recommended Transaction;
 - Vesting the Company's right, title and interest to the Company's assets (the "Canadian Purchased Assets") that are to be included in the Recommended Transaction in the Purchaser; and
 - Sealing the Monitor's liquidation analysis, attached as Confidential Appendix "1" to this Report, pending the closing of the Recommended Transaction or further Order of this Court.

2. BACKGROUND

The Eddie Bauer Group sells outerwear, apparel and accessories, as well as down products for the home, including comforters, pillows and throws.

Eddie Bauer Holdings, Inc. is a publicly traded company, the shares of which are listed on the NASDAQ Global Market under the trading symbol "EBHI". The Eddie Bauer brand is internationally recognized and Eddie Bauer products are available at approximately 370 retail and outlet stores, including approximately 36 retail stores and one warehouse store throughout Canada, through catalogue sales and on the Eddie Bauer Group's website. The Company employs approximately 933 individuals in Canada.

Further background information regarding the Eddie Bauer Group is provided in Richter's report as Proposed Monitor dated June 17, 2009 ("Pre-Filing Report"), its first report dated June 25, 2009 ("First Report") and in the Affidavit of Marvin Edward Toland, the Company's Vice-President, sworn June 17, 2009 and filed as part of the Company's CCAA Application materials. Copies of the Pre-filing Report and the First Report are provided in Appendix "B" and Appendix "C", respectively.

3. SALE PROCESS

At a joint hearing conducted on June 29, 2009, the US Court and this Honourable Court approved the Sale Process, which included a stalking horse process and certain prescribed bidding procedures. The stalking horse bid (the “Stalking Horse Offer”) was submitted by Rainer Holdings LLC (“Rainer”), an affiliate of CCMP Capital Advisors, which offered to purchase for US\$202.3 million substantially all of the assets, property and undertaking of the Eddie Bauer Group, including the assets, property and undertaking of the Company. Pursuant to the Bidding Procedures Order, the Stalking Horse Offer contemplated that it would be entitled to a break fee in the amount of approximately US\$5.1 million (“Break Fee”) and to have its expenses reimbursed in the amount of approximately US\$250,000. A copy of the Bidding Procedures Order is attached as Appendix “D”.

The Stalking Horse Offer contemplated that Rainer would offer employment to substantially all of the Company’s employees, assume at least 250 US retail locations and all Canadian locations and pay all of the Company’s post-filing supplier claims. Pre-filing claims are being paid by the Company in the normal course.

The Sale Process was carried out by the Eddie Bauer Group in accordance with the Bidding Procedures Order. The bid deadline was July 14, 2009. The auction (the “Auction”) commenced at 11:00 a.m. Eastern Daylight Time (“EDT”) on July 16, 2009 and concluded in the early hours of the morning on July 17, 2009.

3.1 Qualified Bids

As required pursuant to the provisions of the Bidding Procedures Order, the Monitor was provided with copies of all Qualified Bids. The Qualified Bids are summarized as follows:

- Two bids contemplated a liquidation of the Eddie Bauer Group's assets (primarily inventory) (the "Inventory Bidders")²;
- Three bids were submitted for the Eddie Bauer Group's intellectual property (the "IP Bidders"); and
- Two bids (in addition to the Stalking Horse Offer) contemplated the acquisition of the Company on a going-concern basis (the "GC Bidders"). One of these bids was submitted at the Auction by a party that was an IP Bidder.

3.2 Auction Results

In advance of the commencement of the Auction, the Company's US counsel, Latham & Watkins LLP, determined the procedures for conducting the Auction. These procedures were established after consultation with the Monitor and advisors to the term lenders and the Unsecured Creditors' Committee (the "Consulting Parties"). In summary, the Auction was conducted on a staged basis such that, firstly, the best inventory offer would be determined by conducting an auction of the Inventory Bidders; secondly, the best intellectual property offer would be determined by conducting an auction of the IP Bidders; and thirdly, the best going-concern offer would be determined by conducting an auction of the GC Bidders. To then determine the successful bidder, the best inventory and intellectual offers were to be married together to compete against the best going-concern offer.

² These bids excluded intellectual property assets.

3.3 Successful Bidder and the Back-Up Bidder

The Purchaser's US\$286 million bid was determined to be the best offer at the Auction because it yielded the highest net recovery for the creditors of the Eddie Bauer Group and, accordingly, it was selected. During the course of the Auction, the Eddie Bauer Group consulted with Consulting Parties on all material Auction decisions.

The Bidding Procedures Order requires that a Back-Up Bidder be identified in the event that the Purchaser fails to close. The Back-Up Bidder is Iconix Brand Group, Inc. and the value of its bid is US\$250 million.

4. THE RECOMMENDED TRANSACTION

A summary of the Recommended Transaction is as follows:

- The Purchaser intends to acquire substantially all of the assets, property and undertaking of the Eddie Bauer Group for US\$286 million, including the Canadian Purchased Assets, and will assume various liabilities;
- Pursuant to the APA, at least 300³ US real property leases and all Canadian realty leases will be assumed by the Purchaser to the extent these leases are assignable and/or consents have been obtained;

³ The Stalking Horse Offer contemplated 250 stores.

- In respect of the Canadian real property leases that are assignable without first obtaining landlord consent or for which consents are obtained, the Company shall assign those leases to the Purchaser and the Purchaser shall assume such leases. For the Canadian real property leases that are not assignable without first obtaining landlord consent, the parties shall use commercially reasonable efforts prior to closing to obtain all consents necessary to assign such leases to the Purchaser. Other than the payment of amounts necessary to cure defaults, if any, and the payment of all actual and pecuniary losses that have resulted from such defaults, the Company shall be under no obligation to compromise any right, asset or benefit or to expend any amount or incur any obligation in excess of a cap established for this purpose. The failure to obtain any or all consents shall not entitle the Purchaser to terminate the transaction, subject to obtaining consents and/or assigning Canadian real property leases which contributed at least 75% of the Company's EBITDA for the year ended December 31, 2008;
- The Purchaser intends to extend offers of employment to all or substantially all of the employees of the Eddie Bauer Group, including those of the Company;
- The APA contemplates that the Purchaser would assume all of the ordinary course liabilities to customers of the business, including gift card, loyalty program reward and return liabilities, liabilities under designated contracts, liabilities arising in the ordinary course under purchase orders with suppliers, post-filing accounts payable and certain liabilities relating to employees; and
- The APA is subject to the approval of the US Court and this Honourable Court.

A copy of the APA is attached to the Company's Affidavit filed in connection with this motion.

4.1 Allocation of Value to Canadian Purchased Assets

The Monitor has advised previously that any offer for the Canadian Purchased Assets is to have an appropriate value allocated to them. Except for certain charges pursuant to the Initial Order, the Company's business and assets are unencumbered and, accordingly, subject to those charges, all value allocated to the Company's business and assets would be distributable to its unsecured creditors, including an intercompany claim in the amount of approximately US\$7.3 million (as at May 30, 2009).

A summary of the Company's unsecured claims based on its May 30, 2009 internal financial statements is provided in the table below:

	US\$000s
Pre-filing trade creditors ⁴	4,806
Intercompany	7,284
Deferred rent obligations	3,478
Total	15,568

In addition to the above claims, there are off-balance sheet obligations that could be owing to employees and landlords in the event that the Company's operations were discontinued. These amounts have not been quantified because they could vary materially depending on a number of factors, including, in the case of employees, the amount of termination notice provided, amounts payable under the *Wage Earner Protection Program Act*, and in the case of landlords, the duration and structure of an insolvency proceeding intended to liquidate the inventory. The Monitor has made enquiries concerning other potential off-balance sheet liabilities, such as litigation claims. The Monitor is not aware of any recent litigation claims and is reviewing certain claims commenced in 2003. The 2003 claims may have been compromised as part of the prior restructuring proceedings involving the Eddie Bauer Group which concluded in 2005. The Monitor will update this Honourable Court on the status of the litigation claims in a subsequent report.

In light of the assumption of liabilities by the Purchaser and the continued payment in the ordinary course of pre-filing supplier claims, the amount of claims against the Company will likely be substantially reduced other than in respect of the intercompany claims which are not being assumed.

⁴ Includes approximately US\$1.5 million of trade payables plus accrued liabilities in the amount of approximately US\$3.3 million.

Eddie Bauer US owns the Company's intellectual property, including the trade name, marks and such. The Company is a licensee of the intellectual property from Eddie Bauer US pursuant to agreements between the two entities. Without the intellectual property, the Company would be unable to continue to operate as Eddie Bauer and its business and assets would not be saleable other than through liquidation. Because of this, the Monitor does not believe that the Company can be sold on a going-concern basis independent of Eddie Bauer US and, accordingly, in order to determine the allocation of value to the Canadian Purchased Assets, the Monitor focussed solely on a liquidation approach.

In the Monitor's view, there are only two material assets in Canada having any value: inventory and equity in the Company's realty leases (if any).

In advance of the Auction, the Monitor engaged an appraiser to value the inventory in a liquidation context and engaged a realtor to determine the value of any equity in the leases. This is because it was not a certainty that liquidation offers would be submitted for the Canadian Purchased Assets and even if such offers were submitted, it was not certain that value allocable to the Canadian Purchased Assets would be appropriate.

The Purchaser has advised that it is prepared to allocate US\$11 million to the Canadian Purchased Assets. This amount exceeds the net value of the Canadian Purchased Assets as determined by the Monitor's liquidation analysis. Accordingly, the Monitor is satisfied with the allocation by the Purchaser to the Canadian Purchased Assets.

The Monitor's liquidation analysis is provided in Confidential Appendix "1". The Monitor believes that this Appendix should be sealed pending completion of the Recommended Transaction so as to preclude an insufficient allocation in the event that the Recommended Transaction does not close.

4.2 Recommendation

The Monitor recommends that this Honourable Court issue an order approving the Recommended Transaction for the following reasons:

- The Sale Process was executed in accordance with the Bidding Procedures Order;
- The Purchaser has allocated a value to the Canadian Purchased Assets which is appropriate in the circumstances; and
- The Recommend Transaction will see the business of the Company continue without disruption, thus providing benefits for employees, suppliers, landlords and customers.

5. CONCLUSION AND RECOMMENDATION

Based on the foregoing, the Monitor respectfully recommends that this Honourable Court make the Company's proposed order.

* * *

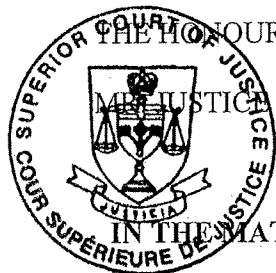
All of which is respectfully submitted,

A handwritten signature in black ink, appearing to read "RSM Richter Inc.", written in a cursive, flowing style.

**RSM RICHTER INC.
IN ITS CAPACITY AS CCAA MONITOR OF
EDDIE BAUER OF CANADA, INC. AND
EDDIE BAUER CUSTOMER SERVICES INC.
AND NOT IN ITS PERSONAL CAPACITY**

Court File No. 09-8240-CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**



HONOURABLE

JUSTICE MORAWETZ

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WEDNESDAY, THE 17TH

DAY OF JUNE, 2009

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
EDDIE BAUER OF CANADA, INC. AND EDDIE BAUER CUSTOMER SERVICES INC.

Applicants

AMENDED AND RESTATED INITIAL ORDER

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Marvin Edward Toland sworn June 17, 2009 (the "Toland Affidavit"), and the Exhibits thereto, and on hearing the submissions of counsel for the Applicants, counsel for Rainier Holdings LLC, counsel for Bank of America, N.A., and counsel for the proposed monitor, RSM Richter Inc. ("**Richter**"), and on reading the consent of Richter to act as the monitor of the Applicants (in such capacity, the "**Monitor**"),

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies.

PLAN OF ARRANGEMENT

3. **THIS COURT ORDERS** that the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”) between, *inter alia*, the Applicants and one or more classes of their secured and/or unsecured creditors as they deem appropriate.

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the “**Business**”) and Property. The Applicants shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that the Applicants shall be entitled to continue to utilize the central cash management system currently in place as described in the Toland Affidavit or replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter

defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay, bonuses and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their respective standard rates and charges; and
- (c) amounts owing for goods and services actually supplied to the Applicants prior to the date of this Order.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicants following the date of this Order.

8. **THIS COURT ORDERS** that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

9. **THIS COURT ORDERS** that, until such time as the Applicants deliver a notice in writing to repudiate a real property lease in accordance with paragraph 11(c) of this Order (a "**Notice of Repudiation**"), the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicants and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order monthly, in advance. On the date of the first of such payments, any arrears relating to the period commencing from and including the date of this Order shall also be paid. Upon delivery of a Notice of Repudiation, the Applicants shall pay all Rent due for the notice period stipulated in paragraph 11(c) of this Order, to the extent that Rent for such period has not already been paid.

10. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to EB Inc. (as defined below) as of the date hereof; (b) to grant no security interests, trust, liens, charges or

encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

11. **THIS COURT ORDERS** that the Applicants shall, subject to any covenants contained in the New Intercompany Loan Documents (as defined below) except that subsection 11(c) below shall apply regardless of the covenants contained in the New Intercompany Loan Documents, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their business or operations and to dispose of redundant or non-material assets not exceeding \$250,000 in any one transaction or \$500,000 in the aggregate, subject to paragraph 11(c), if applicable;
- (b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate on such terms as may be agreed upon between the Applicants and such employee, or failing such agreement, to deal with the consequences thereof in the Plan;
- (c) in accordance with paragraphs 12 and 13, vacate, abandon or quit the whole but not part of any leased premises and/or repudiate any real property lease and any ancillary agreements relating to any leased premises, on not less than fourteen (14) days notice in writing to the relevant landlord on such terms as may be agreed upon between the Applicants and such landlord, or failing such agreement, to deal with the consequences thereof in the Plan; and
- (d) repudiate such of their arrangements or agreements of any nature whatsoever, whether oral or written, as the Applicants deem appropriate on such terms as may be agreed upon between the Applicants and such counter-parties, or failing such agreement, to deal with the consequences thereof in the Plan.

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "**Restructuring**").

12. **THIS COURT ORDERS** that the Applicants shall provide each of the relevant landlords with notice of the Applicants' intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicants' entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days notice to such landlord and any such secured creditors. If the Applicants repudiate the lease governing such leased premises in accordance with paragraph 11(c) of this Order and vacate such leased premises, they shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in paragraph 11(c) of this Order), and the repudiation of the lease shall be without prejudice to the Applicants' claim to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a Notice of Repudiation is delivered, then (a) during the notice period prior to the effective time of the repudiation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the repudiation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises and such landlord shall be entitled to notify the Applicants of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

14. **THIS COURT ORDERS** that, subject to the rights of a trustee in bankruptcy, (i) subject to the paragraphs 9, 11, 12 and 13 of this Order, or except as expressly permitted by the terms of the Applicants' real property leases (collectively, the "**Leases**"), none of the Leases shall, absent further Order of the Court, be amended or varied, or deemed to be amended or varied, in any way without obtaining the prior written consent of the applicable landlords (collectively, the "**Landlords**"); and (ii) where any Leases are not, in accordance with their terms, transferable or

assignable to a purchaser without first obtaining the consent of the applicable Landlord, none of the Leases shall, absent further Order of the Court, be transferred, conveyed, assigned or vested in a purchaser by operation of this Order, save and except to the extent that respective consents have been, or are in the future, obtained from the respective Landlords.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

15. **THIS COURT ORDERS** that until and including July 17, 2009, or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of either of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

16. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of either of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (ii) exempt the Applicants from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

17. **THIS COURT ORDERS** that, during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

18. **THIS COURT ORDERS** that, during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

19. **THIS COURT ORDERS** that, notwithstanding anything else contained herein, no creditor of the Applicants shall be under any obligation after the making of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

20. **THIS COURT ORDERS** that, during the Stay Period, and except as permitted by subsection 11.5(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

21. **THIS COURT ORDERS** that the Applicants shall indemnify their directors and officers from all claims, costs, charges and expenses relating to the failure of the Applicants, after the date hereof, to make payments of the nature referred to in subparagraphs 6(a), 8(a), 8(b) and 8(c) of this Order which they sustain or incur by reason of or in relation to their respective capacities as directors and/or officers of the Applicants except to the extent that, with respect to any officer or director, such officer or director has actively participated in the breach of any related fiduciary duties or has been grossly negligent or guilty of wilful misconduct.

22. **THIS COURT ORDERS** that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$2,000,000, as security for the indemnity provided in paragraph 21 of this Order. The Directors' Charge shall have the priority set out in paragraphs 39 and 41 herein.

23. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 21 of this Order.

APPOINTMENT OF MONITOR

24. **THIS COURT ORDERS** that Richter is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property and the Applicants' conduct of the Business with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicants pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations.

25. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Applicants, to the extent required by the Applicants, in their dissemination of financial and other information to EB Inc. and Bank of America, N.A. (as agent to the lenders providing certain debtor-in-possession financing to EB Inc. and certain of its affiliates in connection with EB Inc.'s and certain of its affiliates' bankruptcy petitions under chapter 11 of title 11 of the United States Code) (the "**U.S. Lender**") on a periodic basis as agreed to between the Applicants, the U.S. Lender and EB Inc., which information may be used in these proceedings;
- (d) advise the Applicants in their preparation of the Applicants' cash flow statements and reporting required by EB Inc., which information shall be reviewed with the Monitor;
- (e) advise the Applicants in their development of the Plan and any amendments to the Plan;
- (f) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (g) have full and complete access to the books, records and management, employees and advisors of the Applicants and to the Business and the Property to the extent required to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (i) consider, and if deemed advisable by the Monitor, prepare a report and assessment on the Plan; and

- (j) perform such other duties as are required by this Order or by this Court from time to time.

26. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

27. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

28. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Applicants and the U.S. Lender with information provided by the Applicants in response to reasonable requests for information made in writing by such Person addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

29. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

30. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicants as and when accounts their respective accounts are rendered.

31. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

32. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and the Applicants' counsel and financial advisors shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$1,000,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 39 and 41 hereof.

INTERCOMPANY FINANCING

33. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to obtain and borrow under intercompany promissory grid notes (the "**New Intercompany Promissory Notes**") issued by the Applicants in favour of Eddie Bauer, Inc. ("**EB Inc.**") in order to finance the Applicants' working capital requirements and other general corporate purposes and capital expenditures (the "**Intercompany Financing**"), provided that borrowings in connection with such Intercompany Financing, from and after the date hereof, shall not exceed U.S.\$7,500,000 unless permitted by further Order of this Court.

34. **THIS COURT ORDERS** that the Intercompany Financing shall be on the terms and subject to the conditions set forth in the New Intercompany Loan Documents.

35. **THIS COURT ORDERS** that the Applicants are hereby authorized and empowered to execute and deliver the New Intercompany Promissory Notes, general security agreements and other definitive documents (collectively, the "**New Intercompany Loan Documents**"), as are contemplated in connection with the Intercompany Financing or as may be reasonably required by EB Inc. pursuant to the terms thereof, and the Applicants are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to EB Inc. under and pursuant to the New Intercompany Loan Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

36. **THIS COURT ORDERS** that the EB Inc. shall be entitled to the benefit of and is hereby granted a charge (the "**Intercompany Charge**") on the Property, which charge shall not exceed U.S.\$7,500,000 plus accrued and unpaid interest, allowable costs and expenses. The Intercompany Charge shall have the priority set out in paragraphs 39 and 41 hereof.

37. **THIS COURT ORDERS** that, subject to the provisions of this Order:

- (a) EB Inc. may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Intercompany Charge or any of the New Intercompany Loan Documents;
- (b) upon the occurrence of an event of default under the New Intercompany Loan Documents, EB Inc., upon seven (7) days notice to the Applicants and the Monitor, may exercise any and all of its rights and remedies against the Applicants or the Property (save that any such rights and remedies relating to Leases shall be subject to the terms of the applicable Leases) under or pursuant to the New Intercompany Loan Documents and the Intercompany Charge, including without limitation, to cease making advances to the Applicants and set off and/or consolidate any amounts owing by EB Inc. to the Applicants against the obligations of the Applicants to EB Inc. under the New Intercompany Loan Documents or the Intercompany Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver,

receiver and manager or interim receiver, or for a bankruptcy order against the Applicants and for the appointment of a trustee in bankruptcy of the Applicants, and upon the occurrence of an event of default under the terms of the New Intercompany Loan Documents, EB Inc. shall be entitled to seize and retain proceeds from the sale of the Property and the cash flow of the Applicants to repay amounts owing to EB Inc. in accordance with the New Intercompany Loan Documents and the Intercompany Charge, but subject to the priorities as set out in paragraphs 39 and 41 of this Order; and

- (c) if, as and when EB Inc. executes a collateral assignment of the New Intercompany Loan Documents to the U.S. Lender, the foregoing rights and remedies of EB Inc. shall be enforceable by the U.S. Lender in accordance with the terms of the New Intercompany Loan Documents, including without limitation the agreement evidencing such collateral assignment,

the foregoing rights and remedies of EB Inc. and the U.S. Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicants or the Property.

38. **THIS COURT ORDERS AND DECLARES** that EB Inc., solely in its capacity as the provider of the Intercompany Financing, and the U.S. Lender, solely in its capacity as collateral assignee of the New Intercompany Loan Documents, shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the New Intercompany Loan Documents..

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

39. **THIS COURT ORDERS** that the priorities of the Directors' Charge, the Administration Charge and the Intercompany Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$1,000,000);

Second – Intercompany Charge (to the maximum amount of U.S.\$7,500,000 plus accrued and unpaid interest, allowable costs and expenses payable by the Applicants); and

Third – Directors' Charge (to the maximum amount of \$2,000,000).

40. **THIS COURT ORDERS** that the filing, registration or perfection of the Directors' Charge, the Administration Charge or the Intercompany Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

41. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person.

42. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtain the prior written consent of the Monitor, EB Inc. and the beneficiaries of each of the Charges.

43. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Charges**") shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "**Agreement**") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the New Intercompany Loan Documents shall create or be deemed to constitute a breach by the Applicants of any Agreement to which they are a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges, or the execution, delivery or performance of the New Intercompany Loan Documents; and
- (c) the payments made by the Applicants pursuant to this Order, the New Intercompany Loan Documents, and the granting of the Charges, do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

44. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

SERVICE AND NOTICE

45. **THIS COURT ORDERS** that the Applicants shall, within ten (10) business days of the date of entry of this Order, send a copy of this Order to their known creditors, other than employees and creditors to which the Applicants owe less than CAD\$1,000, at their addresses as they appear on the Applicants' records, and shall promptly send a copy of this Order (a) to all parties filing a Notice of Appearance in respect of this Application, and (b) to any other interested Person requesting a copy of this Order, and the Monitor is relieved of its obligation under Section 11(5) of the CCAA to provide similar notice, other than to supervise this process.

46. **THIS COURT ORDERS** that the Applicants and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or notice by

courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

47. **THIS COURT ORDERS** that the Applicants, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time and the Monitor may post a copy of any or all such materials on its website at: <http://www.rsmrichter.com/Restructuring/EddieBauer.aspx>.

GENERAL

48. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of their respective powers and duties hereunder.


49. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

50. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

51. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

52. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

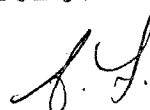
53. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

A handwritten signature in black ink, appearing to be "J. L.", is written over a horizontal line.

ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

JUL 07 2009

PER / PAR:

A handwritten signature in black ink, appearing to be "J. L.", is written next to the "PER / PAR:" label.

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

Court File No: 09-8240-CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF EDDIE BAUER OF
CANADA, INC. AND EDDIE BAUER CUSTOMER SERVICES INC.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

INITIAL ORDER

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Lawyers for the Applicants

RSM Richter

Report of RSM Richter Inc. as Proposed CCAA Monitor of Eddie Bauer of Canada, Inc. and Eddie Bauer Customer Services Inc.

RSM Richter Inc.
Toronto, June 17, 2009

RSM Richter is an independent member firm of RSM International,
an affiliation of independent accounting and consulting firms.

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**ONTARIO
SUPERIOR COURT OF JUSTICE
- COMMERCIAL LIST -**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
EDDIE BAUER OF CANADA, INC. AND
EDDIE BAUER CUSTOMER SERVICES INC.**

**REPORT OF RSM RICHTER INC.
AS PROPOSED CCAA MONITOR OF
EDDIE BAUER OF CANADA, INC. AND
EDDIE BAUER CUSTOMER SERVICES INC.**

June 17, 2009

1. INTRODUCTION

RSM Richter Inc. ("Richter") understands that Eddie Bauer of Canada, Inc. and Eddie Bauer Customer Services Inc. (jointly, the "Company") intend to make an application to this Honourable Court to commence proceedings under the *Companies' Creditors Arrangement Act* (the "CCAA Proceedings"). It is proposed that Richter would be appointed as the monitor ("Proposed Monitor") in the CCAA Proceedings and Richter has consented to act in such capacity.

Shortly prior to, or contemporaneous with, the CCAA Proceedings, Eddie Bauer Holdings, Inc., the Company's US based parent company, and certain other US affiliates (collectively, "Eddie Bauer US"), commenced reorganization cases under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "US Court") (the "Chapter 11 Proceedings"). The Company is not subject to the Chapter 11 Proceedings.

(Eddie Bauer US and the Company are collectively referred to as the “Eddie Bauer Group”. The Chapter 11 Proceedings and the CCAA Proceedings are referred to as the “Restructuring Proceedings”.)

The Affidavit of Marvin Edward Toland sworn June 17, 2009 (the “Toland Affidavit”) and filed in connection with the Company’s CCAA Proceedings describes, *inter alia*, the Company’s background, including the reasons for the commencement of these proceedings. According to the Toland Affidavit, the primary purpose of the Restructuring Proceedings is to allow the Eddie Bauer Group the opportunity to maximize the value of its business and assets in a unified, court-supervised sale process.

1.1 Purposes of this Report

The purposes of this report (“Report”) are to:

- a) Provide background information about the Company;
- b) Detail the proposed mechanism by which the Company’s operations are to be funded during the CCAA Proceedings;
- c) Summarize the anticipated sale process pursuant to which Eddie Bauer US and the Company would be marketed for sale (“Sale Process”), subject to Court approval;
- d) Summarize the proposed cross-border insolvency protocol (the “Protocol”) intended to coordinate the CCAA Proceedings and the Chapter 11 Proceedings;
- e) Set out the basis for the amount of the proposed Directors’ Charge, as defined in the draft Initial Order;
- f) Summarize the contemplated treatment of the Company’s unsecured creditors during the Restructuring Proceedings, including unsecured creditors of the Company; and

- g) Recommend that this Honourable Court make an order granting the relief requested by the Company under the draft Initial Order, including:
- Approval of the proposed funding mechanism;
 - Approval of the Directors' Charge;
 - Approval of the Protocol; and
 - Authorization for the Company to make payments to its vendors for pre-filing obligations owing by the Company to these parties.

1.2 Currency

Unless otherwise noted, all currency references in this Report are to Canadian dollars.

2. BACKGROUND

The Eddie Bauer Group sells outerwear, apparel and accessories, as well as down products for the home, including comforters, pillows and throws.

Eddie Bauer Holdings, Inc. is a publicly traded company, the shares of which are listed on the NASDAQ Global Market under the trading symbol "EBHI". The Eddie Bauer brand is internationally recognized and Eddie Bauer products are available at approximately 370 retail and outlet stores, including approximately 36 retail stores and one warehouse store throughout Canada, through catalogue sales and on the Eddie Bauer Group's website. The Company employs approximately 933 individuals in Canada. The Company's workforce is not unionized.

According to the Toland Affidavit, substantially all management decisions regarding the Company's operations are made by officers and directors of Eddie Bauer US from the Company's head office in Bellevue, Washington. The Company relies on Eddie Bauer US in all aspects of its operations, including day-to-day financing and administration.

Based on information provided to the Proposed Monitor, the Company's operations appear to be reliant upon Eddie Bauer US. In this regard, most merchandise sold at the Company's stores in Canada is Eddie Bauer branded merchandise. The intellectual property associated with the brands is owned by Eddie Bauer US. The Company pays fees and royalties to Eddie Bauer US for its license to use the intellectual property, including the trademarks. The Proposed Monitor understands that the Company's license to use the intellectual property cannot be assigned or transferred by the Company.

3. FUNDING OF THESE PROCEEDINGS

The DIP lenders in the Chapter 11 Proceedings ("DIP Lenders"), being a banking syndicate, including, among others, Bank of America, N.A., General Electric Capital Corporation and CIT Group/Business Credit, Inc., as co-syndication agent, have agreed to fund the operations of Eddie Bauer US during the Chapter 11 Proceedings pursuant a DIP credit facility (the "DIP Facility") in the amount of US\$125 million, including approximately US\$7.5 million in order to fund the Company's operations for the period ending August 29, 2009.

The DIP lenders are also pre-filing lenders to Eddie Bauer US pursuant to the Senior Secured Revolving Credit Facility (as defined in the Toland Affidavit).

The Proposed Monitor understands that the Company does not have any secured creditors (with the potential exception of equipment lessors, if any), nor is it a borrower or guarantor under the Senior Secured Revolving Credit Facility. The Company's operations are funded by Eddie Bauer US on an unsecured basis and the obligation is tracked in an intercompany account.

Subject to the approval of the US Court and this Honourable Court, the proposed funding mechanism contemplates, *inter alia*, that:

- Eddie Bauer US will continue to use its existing centralized cash management system (as described in the Toland Affidavit) and, in turn, will continue to fund the Company's operations through the cash management system;
- The DIP Facility contemplates and allows Eddie Bauer US to advance up to US\$7.5 million to the Company after the date hereof (the "Intercompany Advances"). The Intercompany Advances will be made pursuant to New Intercompany Loan Documents (as defined in the Initial Order and the Toland Affidavit);
- The DIP Facility and the Initial Order contemplate that Eddie Bauer US will be granted a charge over the assets of the Company limited to the actual amount of the Intercompany Advances;
- The Company is not a borrower or guarantor under the DIP Facility;
- The DIP Facility is predicated on Eddie Bauer US carrying out the Sale Process, which will include the marketing of the businesses and assets of Eddie Bauer US and the Company. The Sale Process is to be subject to the approvals of this Honourable Court and the US Court at motions that are anticipated to be brought and heard in late June, 2009;
- Advances from the Company to Eddie Bauer US, if any, are to have the benefit of a super-priority as against certain unencumbered assets¹ of Eddie Bauer US pursuant to orders to be sought from the US Court; and
- In the unlikely event that the Company is a net creditor or Eddie Bauer US², the Company would look to recover against the unencumbered assets of the US Debtors; however, if these assets are insufficient to recover the Company's net advances to Eddie Bauer US, the Monitor would look to recover such advances by way of the allocation of the sale proceeds.

¹ The Proposed Monitor has not had the opportunity to consider the value of the unencumbered assets of Eddie Bauer US.

² As evidenced by the cash flow filed in these proceedings, the Company is projected to be a net borrower from Eddie Bauer US.

The Proposed Monitor believes that the Intercompany Charge is appropriate for the following reasons:

- Absent the proposed funding mechanism, the Company would not have access to the funding it requires to operate;
- The Intercompany Charge is limited to the amount loaned by Eddie Bauer US to the Company after the date of the Initial Order;
- The Company is not guaranteeing the obligations of Eddie Bauer US to the DIP Lenders; and
- Absent a Court-ordered priority, the Company would not be able to secure debtor-in-possession financing.

3.1 Cash Flow

The Company's cash flow projection for the period ending August 29, 2009 is attached to the Toland Affidavit. The Proposed Monitor has not had the opportunity to perform a detailed review of the cash flow and its underlying assumptions as it was only recently approached to act as Monitor in the CCAA Proceedings. The Proposed Monitor has had only limited access to the Company. The Proposed Monitor understands that the Company prepared the cash flow with the assistance of its financial advisors (including advisors familiar with Canadian insolvency proceedings) and that the cash flow is predicated on the Company continuing to operate in the normal course in the context of the CCAA Proceedings. To the extent that actual funding requirements exceed amounts reflected in the attached cash flow, funding would have to be sourced from the DIP Lenders (or another party). Should that unexpected event materialize, the Monitor will advise this Honourable Court immediately.

4. SALE PROCESS

On June 16, 2009, the Board of Directors of Eddie Bauer US approved an offer (the “Stalking Horse Offer”) from Rainier Holdings LLC, an affiliate of CCMP Capital Advisors, to purchase substantially all of the assets, property and undertaking of the Eddie Bauer Group. The Stalking Horse Offer contemplates that the offer will be approved by the US Court as a stalking horse bid in the Sale Process. If the Initial Order is granted, the Proposed Monitor understands that it is the Company’s intention to seek approval of the Sale Process by this Honourable Court, including approval of the Stalking Horse Offer and of the bidding procedures. In connection with that motion, the Proposed Monitor intends to file a report summarizing the Sale Process and the bidding procedures.

In assessing any transaction(s) resulting from the Sale Process, the Proposed Monitor has advised the Company’s advisors that in order for it to recommend a transaction for approval to this Honourable Court, there will need to be an appropriate allocation of value between the business and assets of Eddie Bauer US and those of the Company. The Proposed Monitor has advised that it will base its view of the allocation primarily on the liquidation value of the Company’s business and assets but that it also may give consideration to the values attributed to the Company’s business and assets by other bidders.

In considering value issues, the Proposed Monitor is mindful of the Company’s reliance on Eddie Bauer US in order to operate on a going-concern basis and that absent a sale involving both the business and assets of Eddie Bauer US and the Company, the business and assets of the Company may have to be liquidated. Eddie Bauer US is likely saleable on its own as a going-concern, whereas an independent sale of the Company on a going-concern basis is less likely.

5. CROSS-BORDER INSOLVENCY PROTOCOL

The Company believes that it is appropriate that there be a Protocol between this Honourable Court and the US Court to address issues that could arise in the CCAA Proceedings and the Chapter 11 Proceedings. The Protocol is summarized as follows:

- It is intended to: (i) harmonize and coordinate the Canadian and US Proceedings in order to avoid inconsistent, conflicting or duplicative rulings by the Courts; (ii) ensure all stakeholders are provided sufficient notice of material developments in both the CCAA and US Proceedings; (iii) protect and preserve the substantive rights of all stakeholders; and (iv) preserve the jurisdictional integrity of the Courts;
- It recognizes that certain of the debtors may be creditors of any of the other debtors' estates;
- It provides for court-to-court communication and joint hearings, if required and appropriate in the circumstances;
- It provides for the recognition of stays of proceedings granted by the US Court in Canada and vice versa;
- It provides for the retention and compensation of the professionals involved in both proceedings, and confirms that the Canadian advisors and representatives, including the Proposed Monitor and its legal counsel, shall not be required to have their fees and disbursements subject to the US Court;
- It sets out the notice procedures for all motions and applications made in the Restructuring Proceedings; and
- It is subject to the approval of both the US Court and this Honourable Court.

A copy of the Protocol is attached to the Toland Affidavit.

The Protocol is consistent with the terms and provisions of other protocols adopted by this Honourable Court in cross-border CCAA proceedings and provides a framework to address the general principles and procedural issues that are likely to arise. The Proposed Monitor believes that the Protocol is appropriate in the circumstances.

6. DIRECTORS' AND OFFICERS' CHARGE

The draft Initial Order contemplates a charge in the amount of \$2 million in favour of the Company's Directors and Officers in order to indemnify the Directors and Officers, if necessary, for any liabilities that they may incur from and after the commencement of the CCAA Proceedings. According to the Toland Affidavit, potential claims against the Directors' and Officers' are summarized as follows:

	(US\$000s)
Vacation pay obligation	600
Salaries, wages, benefits and pension contributions for one pay period	635
GST and PST obligation	400
Total	<u>1,635</u>

The Directors' Charge is a standard provision of orders made in CCAA proceedings in order to maintain the involvement of the Directors and Officers. The involvement of these individuals facilitates the continued operations of a business during its restructuring proceedings. The information made available to the Monitor appears to reflect the Directors' and Officers' exposure in these proceedings, as set out above.

7. VENDOR PAYMENTS

The draft Initial Order authorizes the Company to make payments to its suppliers for both post-filing supply and for pre-filing indebtedness. The Company's trade obligations owing to non-arms length suppliers are comprised largely of amounts owing to freight forwarding, custom brokerage service providers, employees and landlords.

The Eddie Bauer Group is of the view that there is a risk that operations could be disrupted and its vendor relationships adversely impacted if it does not have the ability to pay pre-filing obligations to certain vendors. The Eddie Bauer Group is concerned particularly about

overseas vendors that manufacture and supply the preponderance of the Company's inventory. There is also a concern about, *inter alia*, logistics providers (customs brokers, freight forwarders and the like) each of which could impair the timely flow of inventory. The Eddie Bauer Group believes that the value of its business will be maximized if it can pay its pre-filing creditors as amounts become due to them.

The Proposed Monitor consents to the payment of pre-filing creditors as the Eddie Bauer Group believes it is necessary to avoid disruption to the Company's business and the DIP Lenders are supportive of the Restructuring Proceedings. The Proposed Monitor is of the view that funding these obligations will facilitate the smooth operation of the business during the Restructuring Proceedings as vendor procurement issues should be avoided. This will assist to reduce professional fees dealing with procurement issues, which commonly arise in restructuring proceedings.

8. CONCLUSION AND RECOMMENDATION

Based on the foregoing, the Proposed Monitor respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1(g) of this Report.

* * *

All of which is respectfully submitted,

A handwritten signature in black ink, appearing to read "RSM Richter Inc.", is written over a horizontal line.

**RSM RICHTER INC.
IN ITS CAPACITY AS PROPOSED CCAA MONITOR OF
EDDIE BAUER OF CANADA, INC. AND
EDDIE BAUER CUSTOMER SERVICES INC.
AND NOT IN ITS PERSONAL CAPACITY**

RSM! Richter

First Report of RSM Richter Inc. as CCAA Monitor of Eddie Bauer of Canada, Inc. and Eddie Bauer Customer Services Inc.

RSM Richter Inc.
Toronto, June 25, 2009

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Initial Order dated June 17, 2009 “A”

**ONTARIO
SUPERIOR COURT OF JUSTICE
- COMMERCIAL LIST -**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
EDDIE BAUER OF CANADA, INC. AND
EDDIE BAUER CUSTOMER SERVICES INC.**

**FIRST REPORT OF RSM RICHTER INC.
AS CCAA MONITOR OF
EDDIE BAUER OF CANADA, INC. AND
EDDIE BAUER CUSTOMER SERVICES INC.**

June 25, 2009

1. INTRODUCTION

Pursuant to an order of the Ontario Superior Court of Justice (the "Court") made on June 17, 2009 (the "Initial Order"), Eddie Bauer of Canada, Inc. and Eddie Bauer Customer Services Inc. (jointly, the "Company") were granted protection under the *Companies' Creditors Arrangement Act* (the "CCAA") and RSM Richter Inc. ("Richter") was appointed the Monitor (the "Monitor"). A copy of the Initial Order is attached as Appendix "A".

This report ("Report") is filed by Richter in its capacity as Monitor.

On June 17, 2009, Eddie Bauer Holdings, Inc., the Company's US based parent company, and certain other US affiliates (collectively, "Eddie Bauer US") commenced reorganization cases under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "US Court") (the "Chapter 11 Proceedings"). The Company is not subject to the Chapter 11 Proceedings.

(Eddie Bauer US and the Company are collectively referred to as the “Eddie Bauer Group”. The Chapter 11 Proceedings and the CCAA Proceedings are referred to as the “Restructuring Proceedings”.)

The primary purpose of the Restructuring Proceedings is to allow the Eddie Bauer Group the opportunity to maximize the value of its business and assets in a unified, court-supervised sale process.

1.1 Purposes of this Report

The purposes of this Report are to:

- a) Provide background information about the Company, including the pre-filing marketing efforts carried out by the Eddie Bauer Group with the assistance of Peter J. Solomon Company, L.P. (“Solomon”), an investment banking firm retained by the Eddie Bauer Group for this purpose;
- b) Summarize the “stalking horse” offer submitted by Rainer Holdings LLC (“Rainer”), an affiliate of CCMP Capital Advisors, to purchase substantially all of the assets, property and undertaking of the Eddie Bauer Group (the “Stalking Horse Offer”);
- c) Summarize the proposed sale process pursuant to which the business and assets of Eddie Bauer US and the Company would be marketed for sale (“Sale Process”), including the bidding procedures to be used in connection with the Sale Process (the “Bidding Procedures”);
- d) Detail issues around the allocation of value between the business and assets of Eddie Bauer US and the Company potentially resulting from any sale transaction; and
- e) Recommend that this Honourable Court make an order:
 - Approving the Stalking Horse Offer; and
 - Approving the Sale Process, including the Bidding Procedures, and authorizing and directing the Company to conduct the Sale Process on the basis detailed herein.

1.2 Currency

Unless otherwise noted, all currency references in this Report are to Canadian dollars.

2. BACKGROUND

The Eddie Bauer Group sells outerwear, apparel and accessories, as well as down products for the home, including comforters, pillows and throws.

Eddie Bauer Holdings, Inc. is a publicly traded company, the shares of which are listed on the NASDAQ Global Market under the trading symbol “EBHI”. The Eddie Bauer brand is internationally recognized and Eddie Bauer products are available at approximately 370 retail and outlet stores, including approximately 36 retail stores and one warehouse store throughout Canada, through catalogue sales and on the Eddie Bauer Group’s website. The Company employs approximately 933 individuals in Canada. The Company’s workforce is not unionized.

The Company’s background information was summarized in the Affidavit of Marvin Edward Toland sworn June 17, 2009 (the “Toland Affidavit”) and filed in connection with the Company’s CCAA Application Record.

3. PRE-FILING MARKETING EFFORTS

According to the Toland Affidavit, Solomon was retained on December 1, 2008 by the Eddie Bauer Group in order to evaluate financial and strategic alternatives to preserve the Eddie Bauer Group as a going concern and to pursue a sale process. The objective was initially to attempt to restructure the Eddie Bauer Group’s term loan obligations, after which the focus was to solicit interest in the Eddie Bauer Group from private equity buyers and strategic parties with the potential to acquire substantially all of the Eddie Bauer Group’s assets. The

Company was not marketed independently given its integration with the Eddie Bauer US business. As detailed in the Toland Affidavit, and for the reasons set out in Richter's preliminary report dated June 17, 2009 as proposed Monitor (the "Preliminary Report"), the Company does not appear able to carry on the Eddie Bauer business without the branding and support of Eddie Bauer US.

A description of Solomon's sale process is as follows:

- Fifty-five prospective financial and strategic purchasers were identified and contacted;
- Approximately twenty of these parties entered into a confidentiality agreement ("CA") with the Eddie Bauer Group and were provided extensive diligence materials;
- Financial and other diligence information was made available to prospective purchasers on an electronic data site, access to which was granted to prospective purchasers upon execution of a CA; and
- Meetings with management and the Eddie Bauer Group's advisors were arranged upon request.

The process resulted in five non-binding letters of intent. The Eddie Bauer Group provided a draft asset purchase agreement to three of these parties. Following an extensive negotiation and review process with its advisors, the Eddie Bauer Group determined that pursuing a transaction with Rainer was in the best interests of the Eddie Bauer Group.

4. THE STALKING HORSE OFFER

On June 16, 2009, the Eddie Bauer Group entered into an Asset Purchase Agreement with Rainer (the “Stalking Horse APA”), pursuant to which:

- Rainer would acquire substantially all of the assets, property and undertaking of Eddie Bauer US and the Company for a purchase price of US\$202.3 million, including a deposit in the amount of US\$5,057,500. (The APA does not allocate value between the US and Canadian businesses and assets. This issue is discussed in Section 5.1 of this Report.);
- Pursuant to the Stalking Horse APA, at least 250 real property leases will be assumed by Rainer, including all 38 Canadian real property leases (including a lease for the Company’s call centre), to the extent these leases are assignable and/or consents have been obtained;
- In respect of the Canadian real property leases that are assignable without first obtaining landlord consent or for which consents are obtained, the Company shall assign those leases to Rainer and Rainer shall assume such leases. For the Canadian real property leases that are not assignable without first obtaining landlord consent, the parties shall use commercially reasonable efforts prior to closing the transaction to obtain all consents necessary to assign such leases to Rainer. Other than the payment of amounts necessary to cure defaults, if any, and the payment of all actual and pecuniary losses that have resulted from such defaults, the Company shall be under no obligation to compromise any right, asset or benefit or to expend any amount or incur any obligation in excess of a cap established under the Stalking Horse APA for this purpose. The failure to obtain any or all consents shall not entitle Rainer to terminate the Stalking Horse APA, subject to obtaining consents and/or assigning Canadian real property leases which contribute at least 75% of Eddie Bauer of Canada, Inc.’s EBITDA for the year ended December 31, 2008;
- Rainer intends to extend offers of employment to all or substantially all of the employees of the Company and Eddie Bauer US;
- The Stalking Horse APA contemplates that Rainer would assume all of the ordinary course liabilities to customers of the business, including gift card, loyalty program reward and return liabilities, liabilities under designated contracts, liabilities arising in the ordinary course under purchase orders with suppliers, accounts payable and certain liabilities relating to employees;
- The Stalking Horse APA is subject to the approval of the US Court and this Honourable Court. Approval is to be sought from the US Court on June 29, 2009;

- The Stalking Horse APA contemplates a Sale Process would be carried out in the context of the Restructuring Proceedings. The contemplated Sale Process and related timelines are described in Section 6 of this Report; and
- In the event that Rainer is not the successful purchaser, it is entitled to a breakup fee payable by the Eddie Bauer Group of US\$5,057,500, being 2.5% of the purchase price (the “Breakup Fee”). Rainer would also be entitled to be reimbursed for its expenses associated with its offer (US\$250,000) (the “Expense Reimbursement”).

A copy of the Stalking Horse APA is attached to the Company’s Affidavit filed in connection with this motion.

5. SALE PROCESS AND BIDDING PROCEDURES

The Stalking Horse APA contemplates approval of the Bidding Procedures, which are summarized as follows:

- Prospective purchasers shall have until July 10, 2009 to become a “Qualified Bidder”. To become a Qualified Bidder, a prospective purchaser must deliver, *inter alia*: (i) an executed CA; (ii) a letter indicating the estimated value of a prospective transaction (indicating total cash consideration); and (iii) information to be used by the Eddie Bauer Group to determine whether the party has the financial wherewithal to complete a transaction.
- The DIP lenders in the Chapter 11 Proceedings, together with certain other secured lenders of Eddie Bauer US (collectively, the “Secured Lenders”) and Rainer are deemed to be Qualified Bidders.
- The determination of whether a bidder meets the criteria to be deemed a Qualified Bidder shall be made by the Eddie Bauer Group within three business days after a potential bidder provides the requisite information, in consultation with the Official Committee of Unsecured Creditors (the “Committee”), the Secured Lenders and the Monitor.
- The deadline for Qualified Bidders to submit a bid is 5:00 p.m. on July 14, 2009 (the “Bid Deadline”). The Monitor is to receive copies of all bids.
- For a bid to be a “Qualified Bid”, it must meet certain criteria established by the Bidding Procedures, including: (i) a purchase price equal to or greater than US\$208.5 million; (ii) an executed asset purchase agreement with marked revisions to the Stalking Horse APA; (iii) a cash deposit of US\$5,057,500 (being the amount of the Breakup Fee); (iv) it must not

contemplate a breakup fee, expense reimbursement provision or the like; (v) it cannot be subject to any diligence, financing or regulatory conditions of any kind; and (vi) certain other requirements provided for in the Bidding Procedures.

- If the total cash consideration of the Stalking Horse APA is determined to be insufficient to repay, in full, Eddie Bauer Group's indebtedness owing to the Secured Lenders, then the Secured Lenders may submit a "credit bid" for all or substantially all of the Eddie Bauer Group's assets. A credit bid must include a cash deposit of US\$5,057,500, being the amount of the Breakup Fee. In the event a Secured Lender submits a credit bid, that lender would not be consulted for the purposes of determining whether the bids received are Qualified Bids.
- If no Qualified Bids are submitted by the Bid Deadline, the Stalking Horse APA shall be accepted.
- If Qualified Bids are received, an auction is to be conducted on July 16, 2009 with respect to all or some of the assets (the "Auction").
- Bidding at the Auction shall begin initially with the highest Qualifying Bid and continue in increments of no less than US\$500,000.
- With respect to any "overbid" submitted, the consideration offered must exceed the Stalking Horse offer by at least US\$6.2 million. The Monitor notes that the overbid amount exceeds the sum of the Breakup Fee and Expense Reimbursement (totalling US\$5,307,500). The Monitor understands that the difference represents the "topping amount", which is meant to cover the incremental costs of the Auction and, potentially, fees associated with an alternative transaction. The Monitor believes this is reasonable in the circumstances.

The Sale Process contemplates a sale approval motion to be heard before the US Court and this Honourable Court on or around July 17, 2009. The Monitor understands that it is the Eddie Bauer Group's intention for any transaction(s) resulting from the Sale Process to be completed by the end of July, 2009.

5.1 Allocation

The Sale Process does not address the allocation of value between the Company and Eddie Bauer US. The Monitor is in the process of obtaining information from the Eddie Bauer

Group which it requires to perform an estimate of the liquidation value of the Company's business and assets. This will provide a floor allocation which the Monitor will consider in determining whether the allocation by the ultimate buyer is reasonable. The Monitor may consider the value allocated by other bidders to the Canadian business. The Monitor is cognizant, however, of the reliance of the Company on Eddie Bauer US, including that Eddie Bauer US maintains the licences and marks related to the Company's business and its ability to trade as Eddie Bauer.

In the event that the Secured Lenders submit a credit bid and it is the offer approved by this Honourable Court, the Monitor will require that the portion of the purchase price allocable to Canada be funded in cash (as contemplated by the Bidding Procedures).

In the event that Rainer is the successful bidder, there is also a possibility that the allocation issue is of minimal significance. The Stalking Horse APA contemplates that the vast majority of the Company's vendor obligations and realty leases would be paid and/or assumed and the vast majority, if not all, of the Company's employees would be provided employment. In such a circumstance, the majority of the value allocable to the Company would be used to repay the Company's obligation to Eddie Bauer, Inc.¹ (net of amounts owing in respect of the charges provided in the Initial Order), with any residual amount being paid to the Company's shareholder, being Eddie Bauer, Inc., a US entity. Should an alternative transaction result from the Sale Process, there is a similar possibility that the allocation issue is of minimal significance, to the extent that the treatment of the Company's obligations is consistent with the Stalking Horse APA.

¹ According to the Company's May 30, 2009 internal financial statements, the Company's obligation to Eddie Bauer, Inc. totals approximately US\$7.3 million.

5.2 Recommendation

The Monitor believes that the proposed Sale Process and Bidding Procedures are reasonable in the circumstances for the following reasons:

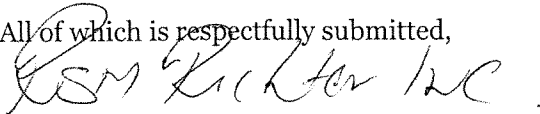
- With the assistance of Solomon, the Eddie Bauer Group has marketed its business and assets since December, 2008;
- In the Monitor's view, the Sale Process is commercially reasonable and the Bidding Procedures and Auction, if any, provide an opportunity for a result superior to the transaction contemplated by the Stalking Horse APA;
- The Sale Process presents the Company with an opportunity to continue as a going-concern should a transaction be completed with Rainer or another party;
- The Monitor understands that the economic stakeholders in these Restructuring Proceedings, including the DIP lenders and the Committee, support the proposed Stalking Horse APA and the Sale Process;
- The debtor-in-possession financing facility, from which the Restructuring Proceedings are being funded, is conditioned on the contemplated Sale Process. Absent this source of funding, the Company may not have the ability to continue operating in the normal course;
- The use of a "stalking horse" offer, together with a breakup fee and expense reimbursement mechanism, is commonly used in US insolvency proceedings and has been used on many occasions in Canadian insolvency proceedings. The Breakup Fee and Expense Reimbursement fee do not appear to be excessive in the circumstances; they are consistent with other Canadian insolvency proceedings. In the Monitor's view, the Breakup Fee and the Expense Reimbursement are not so large as to discourage a third party from submitting an offer that is superior to the Stalking Horse Offer; and
- Given its reliance on Eddie Bauer US for, *inter alia*, the use of the intellectual property owned by Eddie Bauer US which is integral to the Company's business, it does not appear that an independent sale of the Company on a going-concern basis is likely. Accordingly, subject to appropriately addressing the value allocation issue described herein, inclusion of the Company's business and assets in a "joint" Sale Process appears to be appropriate in the circumstances.

6. CONCLUSION AND RECOMMENDATION

Based on the foregoing, the Monitor respectfully recommends that this Honourable Court make the Company's proposed order.

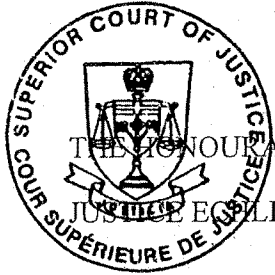
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All of which is respectfully submitted,

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**RSM RICHTER INC.
IN ITS CAPACITY AS PROPOSED CCAA MONITOR OF
EDDIE BAUER OF CANADA, INC. AND
EDDIE BAUER CUSTOMER SERVICES INC.
AND NOT IN ITS PERSONAL CAPACITY**

Court File No.: 09-8240-CL



**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.
JUSTICE EGILIN

) MONDAY, THE 29th
)
) DAY OF JUNE, 2009

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
EDDIE BAUER OF CANADA, INC. AND EDDIE BAUER CUSTOMER SERVICES INC.**

**ORDER
(Bidding Procedures Order)**

THIS MOTION, made by Eddie Bauer of Canada, Inc. and Eddie Bauer Customer Services Inc. (collectively, the "**Applicants**") for the relief set out in the Applicants' notice of motion dated June 23, 2009, was heard this day at 393 University Avenue, Toronto, Ontario.

ON READING the affidavit of Marvin Edward Toland sworn June 23, 2009 (the "**Second Toland Affidavit**"), and the First Report of RSM Richter Inc. dated June 25, 2009 (the "**First Report**"), in its capacity as monitor (the "**Monitor**") of the Applicants, and on hearing submissions of counsel for the Applicants, the Monitor, Rainier Holdings LLC ("**Rainier**"), OMERS Realty Management Corporation, Ivanhoe Cambridge I Inc., Morguard Investments Limited, Retrocom Limited Partnership and Bank of America N.A., no one appearing for any

other person on the service list, although duly served as appears from the Affidavits of Service of Nikki Wilson and Christopher G. Armstrong sworn June 24, 2009, filed.

1. **THIS COURT ORDERS** that the time for the service of the Notice of Motion, the First Report and the Motion Record is hereby abridged so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Second Toland Affidavit.

3. **THIS COURT ORDERS** that, subject to approval thereof by the United States Bankruptcy Court for the District of Delaware in the Chapter 11 Proceedings of the US Debtors, the bidding procedures (the "**Bidding Procedures**") described in the Second Toland Affidavit, the First Report and attached as **Schedule "A"** hereto are hereby approved and the Applicants are hereby authorized and directed to conduct the sale process and auction (the "**Stalking Horse Process**") contemplated therein.

4. **THIS COURT ORDERS** that the asset purchase agreement dated as of June 16, 2009 (the "**Stalking Horse Asset Purchase Agreement**"), among Rainier, as buyer, and Eddie Bauer Holdings, Inc. and each of the subsidiaries of Eddie Bauer Holdings, Inc. listed on Schedule I of the Stalking Horse Asset Purchase Agreement (including the Applicants), as vendors, in the form attached as **Exhibit "B"** to the Second Toland Affidavit be and is hereby approved and accepted as the stalking horse agreement for the purposes of conducting the Stalking Horse Process. For greater clarity, approval of the sale of the Purchased Assets (as defined in the Stalking Horse Asset Purchase Agreement) shall not occur unless and until the issuance of the Canadian Sale

Approval and Vesting Order (as defined in the Bidding Procedures) contemplated by the Stalking Horse Process.

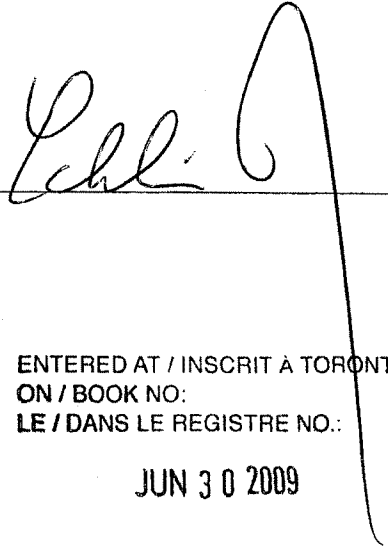
5. **THIS COURT ORDERS** that, in connection with the Stalking Horse Process and pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Applicants shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Purchased Assets and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete a sale of the Purchased Assets (each, a “Sale”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Applicants, or in the alternative destroy all such information. The purchaser of the Purchased Assets shall be entitled to continue to use the personal information provided to it, and related to the Purchased Assets, in a manner which is in all material respects identical to the prior use of such information by the Applicants, and shall return all other personal information to the Applicants, or ensure that all other personal information is destroyed.

6. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or elsewhere, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding,

or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

7. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

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SCHEDULE "A"
BIDDING PROCEDURES
[ATTACHED]

Bidding Procedures

Set forth below are the bidding procedures (the "Bidding Procedures") to be employed with respect to the sale (the "Sale") of the assets (the "Assets") of Eddie Bauer Holdings, Inc., a Delaware corporation ("Eddie Bauer"), 8 of its affiliates who, with Eddie Bauer, are debtors and debtors-in-possession in the jointly administered chapter 11 cases pending in the Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") pursuant to Case No. 09-12099 (MFW) (collectively, the "U.S. Debtors"), and Eddie Bauer Canada, Inc. and Eddie Bauer Customer Services Inc. (collectively, the "Canadian Debtors" and, with the U.S. Debtors, the "Debtors") who are applicants in proceedings commenced before the Ontario Superior Court of Justice, Commercial List (the "Canadian Court") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"). RSM Richter Inc. was appointed as monitor (the "Monitor") of the Canadian Debtors in the CCAA proceedings. Pursuant to the Bidding Procedures Orders (defined below), each of the Bankruptcy Court and the Canadian Court have approved Rainier Holdings LLC as the stalking horse bidder (the "Stalking Horse Bidder") for the Assets, as set forth more fully in that certain asset purchase agreement dated June 16, 2009 (the "Stalking Horse Asset Purchase Agreement").¹ All amounts specified herein are in United States dollars.

On June 17, 2009, the U.S. Debtors filed a Motion Pursuant to 11 U.S.C. §§ 105(a), 363, 365 and Fed. R. Bankr. P. 2002, 6004, 6006 for (I) Entry of an Order (A) Establishing Bidding and Auction Procedures Related to the Sale of Some or All of the U.S. Debtors' Assets; (B) Approving Bid Protections for Sale of the Assets; (C) Scheduling an Auction and Sale Hearing for the Sale of the U.S. Debtors' Assets; (D) Establishing Certain Notice Procedures for Determining Cure Amounts; and (E) Granting Certain Related Relief; and (II) Entry of an Order (A) Approving the Sale of the U.S. Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances and Interests; (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (C) Establishing Rejection Procedures; and (d) Granting Certain Related Relief (the "Bidding Procedures and Sale Motion"). On June 29, 2009 the Bankruptcy Court entered an order approving the Bidding Procedures set forth herein (the "Bidding Procedures Order"). The Bidding Procedures Order also set July 22, 2009 as the date the Bankruptcy Court will conduct a sale hearing (the "Sale Hearing"). At the Sale Hearing, in consultation with the Committee, the DIP Lenders, the Monitor, the Pre-Petition Revolving Agent, and the Pre-Petition Term Agent (as each is defined below) the U.S. Debtors shall seek entry of an order from the Bankruptcy Court authorizing and approving the Sale of the Assets of the U.S. Debtors to the Stalking Horse Bidder or one or more Qualified Bidder(s) (as defined below) that the Debtors determine to have made the highest or best offer for the Assets (the "Successful Bidder").

On June 29, 2009, the Canadian Debtors were granted an order by the Canadian Court approving (A) execution and delivery of the Stalking Horse Asset Purchase Agreement by the Canadian Debtors; and (B) the Bidding Procedures (the "Canadian Bidding Procedures Order") and, with the Bidding Procedures Order, the "Bidding Procedures Orders"). In conjunction with

¹ The Stalking Horse Asset Purchase Agreement is attached as Exhibit A to the Bidding Procedures and Sale Motion (as defined herein). All capitalized terms not otherwise defined herein, shall have the meaning ascribed to them in the Stalking Horse Asset Purchase Agreement.

or within two (2) business days of the Sale Hearing, the Canadian Debtors shall seek entry of an order (the "Canadian Sale Approval Motion") by the Canadian Court authorizing and approving the Sale of the Assets of the Canadian Debtors to the Successful Bidder(s) (such order, as approved, the "Canadian Sale Approval and Vesting Order").

Assets to be Sold

The Debtors are offering for sale all of their Assets and encourage bids for all of the Assets, in whole or in part. The Debtors and, as applicable, the DIP Lenders, the Pre-Petition Revolving Lenders, and the Pre-Petition Term Lenders, shall retain all rights to the Assets that are not subject to a bid accepted by the Debtors and approved by the Bankruptcy Court at the Sale Hearing and the Canadian Court at the hearing on the Canadian Sale Approval Motion.

The Bidding Process

The Debtors and their advisors, after consultation with the Official Committee of Unsecured Creditors (the "Committee"), the U.S. Debtors' prepetition secured lenders,² the lenders under the U.S. Debtors' existing Debtor-in-possession financing facilities (the "DIP Lenders"), and the Monitor, shall (i) determine whether any person is a Qualified Bidder, (ii) coordinate the efforts of Qualified Bidders in conducting their due diligence investigations, (iii) receive offers from Qualified Bidders, and (iv) negotiate any offers made to purchase all or substantially all of the Assets or any portion thereof (collectively, the "Bidding Process"). The Debtors, after notice and consultation with the Committee and the Monitor and upon the consent of the DIP Lenders, the Pre-Petition Revolving Agent, and the Pre-Petition Term Agent, as directed by the Term Lender Group, shall have the right, in the exercise of their fiduciary duties, to adopt such other rules for the Bidding Process (including rules that may depart from those set forth herein) that will better promote the goals of the Bidding Process; *provided, however*, that such other rules are not inconsistent with any of (i) the provisions of the Stalking Horse Asset Purchase Agreement (including the deadlines therein), (ii) the Bid Deposit Requirement (as defined below), (iii) the Break-Up Fee and Expense Reimbursement (each as defined below) requirement, and (iv) the bid protections granted to the Stalking Horse Bidder herein.

² The Debtors are a party to that certain (i) Loan and Security Agreement dated June 21, 2005 (as amended and in effect, the "Pre-Petition Revolving Credit Agreement") with, among others, Bank of America, N.A., as Agent (in such capacity, the "Pre-Petition Revolving Agent") for certain "Lenders" (as defined therein) (the "Pre-Petition Revolving Lenders"), and together with the Pre-Petition Revolving Agent, collectively, the "Pre-Petition Revolving Secured Parties") and (ii) Amended and Restated Term Loan Agreement dated April 4, 2007 (as amended and in effect, the "Pre-Petition Term Credit Agreement") with, among others, Wilmington Trust FSB (as successor by assignment to JPMorgan Chase Bank, N.A.), as Agent (in such capacity, the "Pre-Petition Term Agent", and together with the Pre-Petition Revolving Agent, collectively, the "Pre-Petition Agents") for certain "Lenders" (as defined therein) (the "Pre-Petition Term Lenders", together with the Pre-Petition Term Agent, collectively, the "Pre-Petition Term Secured Parties", and together with the Pre-Petition Revolving Secured Parties, collectively, the "Pre-Petition Secured Parties"). The consent of the Pre-Petition Term Lenders shall be obtained through the Pre-Petition Term Agent as directed by that certain group of "Required Lenders" under the Debtors' Pre-Petition Term Credit Agreement (the "Term Lender Group").

Participation Requirements

A "Qualified Bidder" is a potential bidder that the Debtors, in consultation with the Monitor, the Committee and the DIP Lenders, the Pre-Petition Revolving Agent, and the Pre-Petition Term Agent, determine is reasonably likely (based on financial information submitted by the bidder, the availability of financing, experience and other consideration deemed relevant by the Debtors), to be able to consummate a sale if selected as the Successful Bidder (as defined below). Notwithstanding the foregoing, the Stalking Horse Bidder and each of the DIP Lenders, the Pre-Petition Revolving Lenders, and the Pre-Petition Term Lenders shall be deemed Qualified Bidders.

Due Diligence

Any person that wishes to participate in the Bidding Process must (i) execute a confidentiality agreement in form and substance acceptable to the Debtors; provided however, the Debtors will consult with the Monitor, the Committee and the DIP Lenders, the Pre-Petition Revolving Agent, and the Pre-Petition Term Agent concerning resolving any open issues with respect thereto and (ii) be a Qualified Bidder. Neither the Debtors nor their representatives shall be obligated to furnish information of any kind whatsoever to any person that the Debtor determines not to be a Qualified Bidder. The Debtors will afford any Qualified Bidder the time and opportunity to conduct reasonable due diligence. The Debtors will designate an employee or other representative to coordinate all reasonable requests for additional information and due diligence access from such Qualified Bidders. Neither the Debtors nor any of their respective representatives are obligated to furnish any information to any person other than a Qualified Bidder.

Bid Deadline

A Qualified Bidder that desires to make a bid shall deliver written copies of its bid and the Required Bid Materials (defined below) to (i) the Debtors, c/o Eddie Bauer Holdings, Inc., 10401 N.E. 8th Street, Suite 500, Bellevue, WA 98004, (Attn: Freya Brier); (ii) co-counsel to the Debtors, (a) Young Conaway Stargatt & Taylor, LLP, 1000 West Street, 17th Floor, Wilmington, Delaware 19801, (Attn: Michael R. Nestor, Esq.), (b) Latham & Watkins LLP, Sears Tower, Suite 5800, 233 South Wacker Drive, Chicago, IL 60606, (Attn: David Heller, Esq.), Latham & Watkins LLP, 140 Scott Drive, Menlo Park, CA 94025 (Attn: Tony Richmond, Esq.), Latham & Watkins LLP, 355 South Grand Avenue, Los Angeles, CA 90071-1560, (Attn: Heather Fowler, Esq.) and (c) Goodmans LLP, 250 Yonge St., Suite 2400, Toronto, ON M5B 2M6, (Attn: L. Joseph Latham); (iii) financial advisors to the Debtors, Alvarez & Marsal, 100 Pine Street, 9th Floor, San Francisco, CA 94111 (Attn: Kay Hong); (iv) Investment Bankers, Peter J. Solomon Company, 520 Madison Avenue, 29th Floor, New York, NY 10022 (Attn: Ken Baronoff); (v) counsel to the Term Lender Group, Kasowitz Benson Torres & Friedman LLP, 1633 Broadway, New York, NY 10019 (Attn: David S. Rosner, Esq. and Adam L. Shiff, Esq.); (vi) counsel to the Pre-Petition Term Loan Agent, Paul, Hastings, Janofsky & Walker LLP, 75 East 55th Street, New York, NY 10022 (Attn: Mario J. Ippolito, Esq.); (vii) counsel to the Creditors Committee, Cooley Godward Kronish LLP, 1114 Avenue of the Americas, New York, New York 10036, (Attn: Cathy Hershcopf, Esq, Seth Van Aalten, Esq. and Eric J. Haber, Esq); (viii) counsel to the Pre-Petition Revolving Lenders and DIP Lenders, Riemer & Braunstein

LLP, 3 Center Plaza, Boston, Massachusetts 02108 (Attn: Donald E. Rothman, Esq.); and (viii) the Monitor, RSM Richter Inc., 200 King Street West, Suite 1100, Toronto, ON Canada M5H 3T4, (Attn: Robert Kofman), not later than 5:00 p.m. (prevailing Eastern time) on July 14, 2009 (the "Bid Deadline"). In the event that a bid is determined to be a Qualified Bid for the Assets, the Debtors shall deliver a written copy of any such Qualified Bid and the Required Bid Materials to the Stalking Horse Bidder's counsel, (a) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153 (Attn: David Blittner and Alfredo Perez) and (b) Womble Carlyle Sandridge & Rice, PLLC 222 Delaware Avenue, Suite 1501, Wilmington, DE 19801 (Attn: Mark Desgrosseilliers and Matthew Ward).

Bid Requirements

All bids (other than the (a) Stalking Horse Bid, or (b) subject to the limitations below, a credit bid by the DIP Lenders, Pre-Petition Revolving Lenders, or Pre-Petition Term Lenders that is not a Joint Credit Bid (defined below)) must include (unless such requirement is waived by the Debtors) (the "Required Bid Materials"):

- (i.) A cash purchase price equal to or greater than \$208,500,000 (the "Minimum Bid Amount"), if the bid is for substantially all of the Debtors' assets.
- (ii.) A letter stating that the bidder's offer is irrevocable until the first business day after the Assets on which the Qualified Bidder is submitting a bid have been sold pursuant to the closing of the sale or sales approved by the Bankruptcy Court and the Canadian Court.
- (iii.) An executed copy of a purchase agreement and a redline of a Qualified Bidder's proposed purchase agreement reflecting variations from the Stalking Horse Asset Purchase Agreement (the "Marked Agreement"). All Qualified Bids must provide (a) a commitment to close within the later of (1) the later of eleven days after the entry of the Sale Order and the Canadian Sale Approval and Vesting Order and (2) the expiration or termination of the applicable HSR (defined below) and, if applicable, Competition Act waiting periods; (b) a representation that the Qualified Bidder will (1) make all necessary filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("HSR") and the Canadian Competition Act, R.S.C. 1985, c. C-34, as amended (the "Competition Act") and pay the fees associated with such filings and (2) submit all necessary filings under HSR and the Competition Act within 2 business days following the entry of the Sale Order; and (c) the identity of and contact information for the bidder and full disclosure of any affiliates and any debt or equity financing sources involved in such bid.
- (iv.) A cash deposit in the amount of \$5,057,500 in the form of a wire transfer, certified check or such other form acceptable to the Debtors (the "Bid Deposit" which shall be placed in an escrow account, the "Escrow Account"). The Escrow Account shall not be subject to the claims, liens, security interests, or encumbrances of Debtors' creditors, including those creditors serving as debtor-in-possession or cash collateral lenders to the Debtors, and funds shall be

disbursed from the Account only as follows: (i) if the Qualified Bidder becomes the Successful Bidder, its Bid Deposit will be used to satisfy any Break-Up Fee and Expense Reimbursement to which the Stalking Horse Bidder is entitled hereunder by reason of its not being the Successful Bidder, with the balance, if any, to be released to the Debtors or applied as provided under any asset purchase agreement between the Debtors and such Successful Bidder, and (ii) if such Qualified Bidder is not the Successful Bidder at the Auction, then its Bid Deposit shall be returned to it (subject to the other provisions of these Bid Procedures and the terms of its asset purchase agreement with the Debtors).

- (v) A representation of the bidder and written evidence that the bidder has a commitment for financing or other evidence of the proposed purchaser's ability to consummate the proposed transaction, including executed copies of any financing agreements, commitments, guarantees of the payment obligations of the proposed purchaser, and which the Debtors, in consultation with the Monitor, Committee and the DIP Lenders, the Pre-Petition Revolving Agent, and the Pre-Petition Term Agent, believe to be sufficient to satisfy the bidder's obligations under its proposed bid, including the standards to provide adequate assurance of future performance of any contracts and leases to be assumed and assigned under Bankruptcy Code section 365 and to consummate the transaction contemplated by the Marked Agreement.
- (vi.) The bid shall identify with particularity the Debtors' executory contracts and unexpired leases with respect to which the bidder seeks to receive an assignment and any designation rights it seeks.
- (vii.) The bid shall not request or entitle the bidder to any transaction or break up fee, expense reimbursement, termination or similar type of fee or payment and shall include an acknowledgement and representation of the bidder that it has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its offer, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid, and that it did not rely upon any written or oral statements, representations, warranties, or guarantees, express, implied, statutory or otherwise, regarding the Assets, the financial performance of the Assets or the physical condition of the Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures or the Stalking Horse Asset Purchase Agreement.
- (viii.) The bid shall not contain any due diligence, financing or regulatory contingencies of any kind (other than a condition that any applicable waiting period under HSR or the Competition Act, as the case may be, shall have expired or been terminated), though the bid may be subject to the satisfaction of specific conditions in all material respects at Closing.

- (ix.) The bid shall fully disclose the identity of each entity that will be bidding for the Assets or otherwise participating in connection with such bid, and the complete terms of any such participation.
- (x.) The bid shall state that the offering party consents to the jurisdiction of each of the Bankruptcy Court and the Canadian Court.
- (xi.) The bid shall include evidence of authorization and approval from the bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the submitted purchase agreement of the bidder.
- (xii.) The bid shall include an allocation of the cash purchase price among the Assets.
- (xiii.) The bid shall identify with particularity the Assets included in the bid and the liabilities, if any, being assumed.
- (xiv.) Materials demonstrating that the bidder can satisfy the requirement of adequate assurance of future performance in accordance with Sections 365(b)(1)(A) and 365(f)(2)(B) of the Bankruptcy Code. Such materials shall include but are not limited to sufficient information, as may be requested by the Debtors, to allow the Debtors to determine that the bidder has the financial wherewithal to close a sale of the Assets, including, but not limited to, a signed commitment for any debt or equity financing, a bank account statement showing the ability of a Qualified Bidder to pay cash for the Assets, and current audited financial statements (or such other form of financial disclosure and credit-quality support or enhancement acceptable to the Debtors) of the Qualified Bidder or those entities that will guarantee in full the payment obligations of the Qualified Bidder, and appropriate projections of future performance.
- (xv.) Written acknowledgement and agreement that the sale, if any, of customer lists, customer data and other consumer privacy information shall be subject to and conform to the recommendations of the consumer privacy ombudsperson to be appointed pursuant to 11 U.S.C. §332 (the "Consumer Privacy Ombudsperson") (to the extent that appointment of a Consumer Privacy Ombudsman is necessary) in connection with the transactions contemplated herein.

A bid received from a Qualified Bidder that includes all of the Required Bid Materials and is received by the Bid Deadline is a "Qualified Bid." The Debtors, in consultation with the Committee, the DIP Lenders, the Pre-Petition Revolving Agent, the Pre-Petition Term Agent, and the Monitor, reserve the right to determine the value of any Qualified Bid (or aggregate Qualified Bids), and which Qualified Bid (or aggregate Qualified Bids) constitutes the highest or best offer. Subject to the paragraph below titled "Credit Bidding," for the Debtors to determine, after consultation with the Committee, the DIP Lenders, the Pre-Petition Revolving Agent, the Pre-Petition Term Agent, and the Monitor, that a combination of Qualified Bids for the Debtors' Assets are the Successful Bids (defined below), such combination of bids must provide a cash component at closing in excess of \$208,500,000.

Notwithstanding the bid requirements detailed above, (a) the Stalking Horse Bid shall be deemed a Qualified Bid; (b) the DIP Lenders, Pre-Petition Revolving Lenders, or Pre-Petition Term Lenders, or their applicable designee or assignee, submitting a credit bid that is not a Joint Credit Bid (defined below) pursuant to section 363(k) of the Bankruptcy Code shall not be required to comply with the requirements set forth in subparagraphs (i), or (v) of the Bid Requirements (in each case, unless otherwise required by the Court or as set forth below), it being understood that the Pre-Petition Term Lenders and the Pre-Petition Term Agent shall be free to participate in discussions and arrangements with potential investors and/or joint venture partners that might be involved in a credit bid (provided that such parties are bound by appropriate confidentiality agreements); and (c) the DIP Lenders, Pre-Petition Revolving Lenders, or Pre-Petition Term Lenders as of July 14, 2009 submitting a credit bid pursuant to section 363(k) of the Bankruptcy Code shall not be required to comply with the requirements set forth in subparagraph (iv); provided that if any such DIP Lender, Pre-Petition Revolving Lender, or Pre-Petition Term Lender participates in or submits a bid, directly or indirectly, by way of equity investment, contract or other type of arrangement with any partner, investors, joint ventures, other co-bidder or any person that is not a DIP Lender, Pre-Petition Revolving Lender or Pre-Petition Term Lender of record as of July 14, 2009 (a "Joint Credit Bid"), such DIP Lender, Pre-Petition Revolving Lender, or Pre-Petition Term Lender and other participants shall be required to comply with the requirements of subparagraphs (i) through (xv) above. The Debtors shall (i) notify the Stalking Horse Bidder, the DIP Lenders, the Pre-Petition Revolving Agent, and the Pre-Petition Term Agent upon receipt if one or more Qualified Bids are received and (ii) provide the Required Bid Materials relating to such Qualified Bids to the Stalking Horse Bidder, the DIP Lenders, the Pre-Petition Revolving Agent, and the Pre-Petition Term Agent.

Credit Bidding

The DIP Lenders, the Pre-Petition Revolving Lenders, and the Pre-Petition Term Lenders, or their designee or assignee, may make a credit bid or Joint Credit Bid for all of the collateral securing their claims to the full extent permitted by Bankruptcy Code section 363(k); *provided, however*, that any credit bid or Joint Credit Bid must include a cash amount for any assets upon which the DIP Lenders, the Pre-Petition Revolving Lenders, the Pre-Petition Term Lenders, or other participants in a Joint Credit Bid, as applicable, did not have a valid and perfected first priority pre-petition security interest if such assets are sought to be obtained through such credit bid. To the extent applicable, any party submitting a Joint Credit Bid shall identify all participants in a Joint Credit Bid. In the event a DIP Lender, Pre-Petition Revolving Lender, or Pre-Petition Term Lender or their applicable designee or assignee submits a Joint Credit Bid for all of their collateral pursuant to these Bidding Procedures at any Auction (as defined below), the Debtors reserve their rights to not consult with such DIP Lender, Pre-Petition Revolving Lender, or Pre-Petition Term Lender; provided however, (i) that if such DIP Lender, Pre-Petition Revolving Lender, or Pre-Petition Term Lender is bidding solely on its own collateral such consultation rights shall not be altered, and (ii) that if such DIP Lender, Pre-Petition Term Lender permanently withdraws from the bidding process, the applicable consultation rights shall be reinstated. If a DIP Lender, Pre-Petition Revolving Lender, or Pre-Petition Term Lender does not consummate the sale transaction contemplated by such credit bid as a result of a breach of the terms and conditions of the credit bid, then the Debtors shall have the right to reduce such Pre-Petition Revolving Lender's, or Pre-Petition Term Lender's pre-petition debt by at least \$5,057,500 and to reduce the DIP Lenders' post-petition claim by at

least \$5,057,500.² Notwithstanding anything to the contrary set forth herein, prior to making any changes to the rights of (i) the DIP Lenders, (ii) the Pre-Petition Revolving Agent, and (iii) the Pre-Petition Term Agent to credit bid on the terms and conditions set forth in this paragraph, the Debtors will obtain the consent of (i) the DIP Lenders, (ii) the Pre-Petition Revolving Agent, and (iii) the Pre-Petition Term Agent, as directed by the Term Lender Group or permission of the Bankruptcy Court to make such changes.

"As Is, With All Faults"

The sale of the Assets shall be on an "as is" and "with all faults" basis and without representations, warranties, or guarantees, express, implied or statutory, written or oral, of any kind, nature, or description by the Debtors, their agents, their representatives or their estates, or any of the other parties participating in the sales process pursuant to these Bid Procedures, except as otherwise provided in a definitive purchase agreement with the Debtors. By submitting a bid, each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its offer, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid, and that it did not rely upon any written or oral statements, representations, warranties, or guarantees, express, implied, statutory or otherwise, regarding the Assets, the financial performance of the Assets or the physical condition of the Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures or as set forth in a definitive purchase agreement with the Debtors.

Free of Any and All Interests

Except as otherwise provided in the Stalking Horse Asset Purchase Agreement or another Successful Bidder's purchase agreement (i) all of the U.S. Debtors' right, title and interest in and to the Assets subject thereto shall be sold free and clear of any pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon (collectively, the "Interests") to the maximum extent permitted by section 363 of the Bankruptcy Code, with such Interests to attach to the net proceeds of the sale of the Assets with the same validity and priority as such Interests applied against the Assets, and (ii) all of the Canadian Debtors' right, title and interest in and to the Assets subject thereto shall be sold free and clear of any Interests (except for any permitted encumbrances identified in the Canadian Sale Approval and Vesting Order) pursuant to the Canadian Sale Approval and Vesting Order.

The Auction and Auction Procedures

If a credit bid (that is not a Joint Credit Bid unless such Joint Credit Bid is deemed by the Debtors, after consultation with the Committee, the Monitor, the DIP Lenders, the Pre-Petition

² The Debtors and the Committee each reserve all of their other rights and remedies in the event that a DIP Lender, Pre-Petition Revolving Lender, or Pre-Petition Term Lender or their applicable designee or assignee does not consummate the sale transaction contemplated by a credit bid that is deemed to be the Successful Bid at the conclusion of the Auction.

Revolving Agent, and the Pre-Petition Term Agent, to be a Qualified Bid), or a Qualified Bid (other than that submitted by the Stalking Horse Bidder) or Qualified Bids which, in either case, in the aggregate provide for cash consideration of not less than \$208,500,000, have been received by the Debtors, the Debtors may conduct an auction (the "Auction") with respect to all of the Assets. The Auction shall be conducted at the offices of Latham & Watkins LLP, 885 Third Avenue, New York, New York 10022 (the "Auction Site") at 11:00 a.m. (prevailing Eastern time) on July 16, 2009 (the "Auction Date"), or such other place and time as the Debtors shall notify all Qualified Bidders who have submitted Qualified Bids and expressed their intent to participate in the Auction as set forth above. Prior to moving the Auction Date, the Debtors shall consult with the Stalking Horse Bidder, the Committee, the Monitor, the DIP Lenders, the Pre-Petition Revolving Agent, and the Pre-Petition Term Agent.

Except as otherwise provided herein, based upon the terms of the Qualified Bids received, the number of Qualified Bidders participating in the Auction, and such other information as the Debtors determine is relevant, the Debtors, in consultation with the Monitor, the Committee, the DIP Lenders, the Pre-Petition Revolving Agent, and the Pre-Petition Term Agent, may conduct the Auction in any manner that they determine will achieve the maximum value for the Assets, including, without limitation, conducting bidding for various lots of Assets, if appropriate. The Debtors thereafter, in consultation with the Monitor, the Committee, the DIP Lenders, the Pre-Petition Revolving Agent, and the Pre-Petition Term Agent, may offer the Assets in such successive rounds as the Debtors, in consultation with the Monitor, the Committee, the DIP Lenders, the Pre-Petition Revolving Agent, and the Pre-Petition Term Agent, determine to be appropriate so as to obtain the highest or otherwise best bid or combination of bids for the Assets. The Debtors, in consultation with the Monitor, the Committee, the DIP Lenders, the Pre-Petition Revolving Agent, and the Pre-Petition Term Agent, also may set opening bid amounts in each round of bidding as the Debtors determine to be appropriate.

If Qualified Bidders submit Qualified Bids, then the Debtors, in consultation with the Monitor, the Committee, the DIP Lenders, the Pre-Petition Revolving Agent, and the Pre-Petition Term Agent, shall (i) promptly following the Bid Deadline, review each Qualified Bid on the basis of the financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the Sale, and (ii) as soon as practicable after the conclusion of the Auction, identify the highest or otherwise best offer or combination of offers for the Assets (to the extent any such bid(s) is acceptable to Debtors, in consultation with the Monitor, the Committee, the DIP Lenders, the Pre-Petition Revolving Agent, and the Pre-Petition Term Agent, a "Successful Bid" and the bidder or bidders making such bid, the "Successful Bidder"). At the Sale Hearing, the Debtors, after consultation with the Monitor, the Committee, the DIP Lenders, the Pre-Petition Revolving Agent, and the Pre-Petition Term Agent, may present the Successful Bid(s) to the Bankruptcy Court for approval. At the hearing on the Canadian Sale Approval Motion, the Debtors will present the same Successful Bid(s) to the Canadian Court for approval as were presented to the Bankruptcy Court. The Debtors reserve all rights not to submit any bid which is not acceptable to the Debtors for approval by the Bankruptcy Court and the Canadian Court. The Debtors acknowledge that the Stalking Horse Bid is a Qualified Bid and shall be submitted to the Bankruptcy Court and the Canadian Court for approval in the event that there are no other Successful Bids. Except as otherwise provided herein or as restricted by the Stalking Horse

Asset Purchase Agreement, the Debtors, in the exercise of their fiduciary duties, and upon consultation with the Committee, the Monitor, the DIP Lenders, the Pre-Petition Revolving Agent, and the Pre-Petition Term Agent, may adopt rules for bidding at the Auction that, in its business judgment, will better promote the goals of the bidding process, the Bankruptcy Code, the CCAA or any order of the Bankruptcy Court or the Canadian Court entered in connection herewith.

If no Qualified Bid is submitted by the Bid Deadline or all Qualified Bids that have been submitted have been withdrawn prior to the Bid Deadline or the Auction Date, then the Debtors shall cancel the Auction and accept the Stalking Horse Bid (in which case, the Successful Bid shall be the Stalking Horse Bid, and the Successful Bidder shall be the Stalking Horse Bidder).

Break-Up Fee and Expense Reimbursement

To provide an incentive and to compensate the Stalking Horse Bidder for performing the substantial due diligence and incurring the expenses necessary and entering into the Stalking Horse Asset Purchase Agreement with the knowledge and risk that arises from participating in the sale and subsequent bidding process, the Debtors have agreed to pay the Stalking Horse Bidder, under the conditions outlined herein and in the Stalking Horse Asset Purchase Agreement, a break-up fee in the amount of \$5,057,500, (the "Break-Up Fee") and to reimburse the Stalking Horse Bidder for the reasonable out-of-pocket expenses associated with the Stalking Horse Asset Purchase Agreement (in excess of the amounts paid prior to the Petition Date) in the amount of \$253,500 (the "Expense Reimbursement"). The Debtors will take into account the Break-Up Fee and Expense Reimbursement in each round of bidding with respect to the Stalking Horse Bidder and with respect to a credit bid of the Pre-Petition Term Lenders that is not a Joint Credit Bid.

The Break-Up Fee and the Expense Reimbursement shall be paid to be determined in accordance with the Stalking Horse Asset Purchase Agreement.

The Break-Up Fee and Expense Reimbursement were a material inducement for, and a condition of, the Stalking Horse Bidder's entry into the Stalking Horse Asset Purchase Agreement. The Break-Up Fee and Expense Reimbursement shall be payable as set forth herein and in the Bidding Procedures Orders.

To the extent that the DIP Lenders, Pre-Petition Revolving Lenders, Pre-Petition Term Lenders is the Successful Bidder pursuant to a credit bid, the Break-Up Fee and Expense Reimbursement shall not be paid to the Stalking Horse Bidder. To the extent that the DIP Lenders, Pre-Petition Revolving Lenders, or Pre-Petition Term Lenders participate in a Joint Credit Bid and such Joint Credit Bid is the Successful Bid, the Break-Fee and Expense Reimbursement shall be paid to the Stalking Horse Bidder.

Overbid Amount; Minimum Bid Increment

There shall be an overbid amount that a Qualified Bidder or aggregate Qualified Bidders must bid to exceed the Stalking Horse Bid ("Overbid Amount"), and that amount shall be at least \$6,200,000 for all bids made by Qualified Bidders. For example, (a) if a Qualified Bidder bids the Overbid Amount, the next bid for any Qualified Bidder other than the Stalking Horse Bidder

cannot be less than \$208,500,000 (\$202,300,000 plus \$6,200,000) and (b) if the Stalking Horse Bidder submits a bid in excess of the stalking horse bid set forth in the Stalking Horse Asset Purchase Agreement, such bid cannot be less than \$202,800,000 (\$202,300,000 plus \$500,000). Subsequent bids and subsequent aggregate bids shall not be less than \$500,000 in excess of the preceding bid. The Debtors will take into account the fact that the Break-Up Fee and Expense Reimbursement is not payable in each round of bidding with respect to the Stalking Horse Bidder and with respect to a credit bid of the Pre-Petition Term Lenders. The Debtors will take into account the fact that the Break-Up Fee and Expense Reimbursement will be payable in each round of bidding with respect to a Joint Credit Bid.

Acceptance of Qualified Bids

The Debtors shall sell the Assets to any Successful Bidder only upon the approval of a Successful Bid by the Bankruptcy Court after the Sale Hearing and by the Canadian Court after the hearing on the Canadian Sale Approval Motion. The Debtors' presentation of a particular Qualified Bid to the Bankruptcy Court and the Canadian Court for approval does not constitute the Debtors' acceptance of the bid. The Debtors will be deemed to have accepted a bid only when the bid has been approved by the Bankruptcy Court at the Sale Hearing and the Canadian Court at the hearing on the Canadian Sale Approval Motion. All counterparties to assumed contracts reserve their right to object to the Debtors' selection of any Successful Bidder (including the assignment of any of such objector's assumed executory contract or unexpired lease thereto, *provided, however*, that any objection to such assignment on the basis of the cure amount must be made and/or reserved as set forth in any order of the Bankruptcy Court or the Canadian Court).

Sale Hearing

A Sale Hearing is scheduled for July 22, 2009 at 9:30 a.m. (prevailing Eastern Time) in the Bankruptcy Court with Objections to the Sale to be filed on or before July 20, 2009 at 12:00 p.m. Cure objections for all non-debtor parties to executory contracts and unexpired leases (other than unexpired real property leases) must be filed on or before July 16, 2009 at 4:00 p.m. A hearing on the Canadian Sale Approval Motion will be held in conjunction with the Sale Hearing or no later than two (2) business days after the Sale Hearing. Following the approval of the Sale of all or substantially all of the Assets to any Successful Bidder at the Sale Hearing and at hearing on the Canadian Sale Approval Motion, if the Successful Bidder fails to consummate an approved Sale within the later of (1) eleven days after the entry of the Sale Order and the applicable waiting period in the Canadian Proceeding and (2) the expiration or termination of the applicable HSR and, if applicable, Competition Act waiting periods, the Debtors, and upon consultation with the Committee, the Monitor, the DIP Lenders, the Pre-Petition Revolving Agent, and the Pre-Petition Term Agent, shall be authorized, but not required, to deem the next highest or otherwise best Qualified Bid (the "Back-Up Bid" and the party submitting the Back-Up Bid, the "Back-Up Bidder"), as disclosed at the Sale Hearing and in connection with the Canadian Sale Approval Motion, the Successful Bid, and the Debtors in consultation with the Committee, the Monitor, the DIP Lenders, the Pre-Petition Revolving Agent, and the Pre-Petition Term Agent, shall be authorized, but not required, to consummate the sale with the Back-Up Bidder submitting such bid without further order of the Bankruptcy Court or the Canadian Court. The Back-Up Bid shall remain open until the first business day following the

consummation of a Sale of the Assets to the Successful Bidder. The Debtors, in the exercise of their business judgment, in consultation with the Committee, the Monitor, the DIP Lenders, the Pre-Petition Revolving Agent, and the Pre-Petition Term Agent, as directed by the Term Lender Group, reserve their right to the extent consistent with the Stalking Horse Asset Purchase Agreement to change the date of the Sale Hearing and the hearing on the Canadian Sale Approval Motion in order to achieve the maximum value for the Assets. Notwithstanding anything to the contrary in this paragraph, the Stalking Horse Bidder shall not be considered a Back-Up Bidder and the Stalking Horse Bid shall not be considered a Back-Up Bid, unless, prior to the Sale Hearing, the Stalking Horse Bidder agrees otherwise.

Modifications

The Debtors, in prior consultation with the Monitor, the Committee, the DIP Lenders, the Pre-Petition Revolving Agent, and the Pre-Petition Term Agent, may (a) determine which Qualified Bid, if any, is the highest or otherwise best offer; and (b) reject at any time before entry of an order of the Bankruptcy Court approving a Qualified Bid, any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of sale, or (iii) contrary to the best interests of the Debtors, their estates and creditors. Notwithstanding the foregoing, the provisions of this paragraph shall not operate or be construed to permit the Debtors to (i) accept any Qualified Bid that (x) does not require a bid deposit of at least \$5,057,500 be placed in a protected, segregated account, which shall serve as protection and security for the Stalking Horse Bidder as outlined herein or (y) does not equal or exceed the Overbid Amount, or (ii) impose any terms and conditions upon the Stalking Horse Bidder that are contradictory to or in breach of the terms of the Stalking Horse Asset Purchase Agreement other than any such terms and conditions set forth in these Bidding Procedures or the Bidding Procedures Order.

Miscellaneous

The Auction and Bid Procedures are solely for the benefit of the Debtors and nothing contained in the Bidding Procedures Order or Bid Procedures shall create any rights in any other person or bidder (including without limitation rights as third party beneficiaries or otherwise) other than the rights expressly granted to a Successful Bidder under the Bidding Procedures Order. The bid protections incorporated in these Bidding Procedures are solely for the benefit of the Stalking Horse Bidder.

Except as provided in the Bidding Procedures Orders and Bidding Procedures, the Bankruptcy Court and the Canadian Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of the Bidding Procedures Order and the Canadian Bidding Procedures Order, respectively.

In the event the Stalking Horse Bidder is not the Successful Bidder, the Stalking Horse Bidder shall have standing to object to the sale of the Assets or any portion thereof (including the conduct of the Auction and interpretation of these bidding procedures) at the Sale Hearing and at the hearing on the Canadian Sale Approval Motion.

The Pre-Petition Term Secured Parties shall be deemed to have consented and waived any and all applicable rights under section 363(f) of the Bankruptcy Code.

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

Court File No. 09-8240-CL

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
EDDIE BAUER OF CANADA, INC. AND EDDIE BAUER CUSTOMER SERVICES INC.**

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

**ORDER
(Bidding Procedures)**

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