

RSM Richter

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

RSM Richter Inc.
Toronto, December 3, 2009

Table of Contents

1.	INTRODUCTION.....	1
1.1	Purposes of this Report	2
2.	BACKGROUND	3
2.1	The Transaction	3
2.2	Expansion of Monitor's Powers	4
3.	TRANSFER PRICING ISSUE	4
3.1	Gowlings Engagement Letter	5
3.2	Recommendation re: Gowlings Retention	6
4.	CLAIMS PROCEDURE.....	7
5.	COMPANY'S REQUEST FOR AN EXTENSION	8
5.1	Cash Flow	9
6.	OVERVIEW OF THE MONITOR'S ACTIVITIES	9
7.	CONCLUSION AND RECOMMENDATION	10

Table of Appendices

Appendix “A”	Amended and Restated Initial Order of the <i>Ontario</i> Superior Court of Justice (Commercial List) dated June 17, 2009
Appendix “B”	Proposed Engagement Letter with Gowling Lafleuer Henderson LLP
Appendix “C”	Statement of Receipts and Disbursements for the period ending December 1, 2009

**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.**

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

December 3, 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"), Tenere of Canada Inc. (formerly, Eddie Bauer of Canada, Inc.) and Yuma Customer Services Inc. (formerly, 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 was approved by this Honourable Court on June 25, 2009.

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

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) Summarize an issue involving the transfer pricing utilized on transactions between the Company and Eddie Bauer US during their 2004 through 2006 fiscal years and recommend the retention of Gowling Lafleur Henderson LLP ("Gowlings") for the purposes of filing a "Competent Authority" request with Canada Revenue Agency ("CRA") and Internal Revenue Service ("IRS") in order to pursue a potential tax refund;
- c) Summarize the status of the claims procedure (the "Claims Procedure") being administered by the Monitor in accordance with a Court order made on July 22, 2009 (the "Claims Procedure Order");
- d) Provide an overview of the Monitor's activities since September 14, 2009, the date on which its activities were previously approved; and
- e) Recommend that this Honourable Court make an order:
 - Approving the retention of Gowlings and authorizing the Monitor to execute the proposed engagement letter on the Company's behalf;

- Granting the Company's request for an extension of its stay of proceedings from December 18, 2009, the date that the stay expires, to April 30, 2010; and
- Approving the Monitor's activities, as described in this Report.

2. BACKGROUND

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

Eddie Bauer Holdings, Inc. was a publicly traded company, the shares of which were 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. At the commencement of these proceedings, the Company employed approximately 933 individuals in Canada.

2.1 The Transaction

At a joint hearing conducted on July 22, 2009, the US Court and this Honourable Court approved a transaction ("Transaction") between the Eddie Bauer Group and Everest Holdings LLC, an affiliate of Golden Gate Private Equity, Inc. (the "Purchaser"), which included all of the Company's business and assets. The purchase price under the Transaction was US\$286 million, of which US\$11 million (the "Canadian Proceeds") was allocated to the Company's assets. The Transaction closed on August 3, 2009 and the Canadian Proceeds were paid to the Monitor and deposited by it into a trust account which it controls (the "Trust Account").

2.2 Expansion of Monitor's Powers

On August 20, 2009, the Court made an order (the "August 20th Order") which, *inter alia*, expanded the Monitor's powers to make certain payments from the Trust Account on the Company's behalf and to execute documents on the Company's behalf. The August 20th Order was required given that the Company no longer has any bank accounts or employees and all of its Directors have resigned.

3. TRANSFER PRICING ISSUE

Prior to the Restructuring Proceedings, the Eddie Bauer Group commenced efforts to collect a tax refund or refunds involving the transfer pricing utilized for royalties and management fees charged by Eddie Bauer US to Eddie Bauer Canada during the 2004 through 2006 fiscal years. These efforts included retaining KPMG LLP to perform a transfer pricing study (the "Study"). According to the Study, it appears that royalties and management fees charged by Eddie Bauer US to Eddie Bauer Canada may have been below standard practice. Accordingly, there may be tax refunds available to the Company should the amended rates for royalties and/or management fees be applied and accepted by CRA and IRS.

In order to commence a refund application process of this nature, a "Competent Authority" request must be submitted to CRA and IRS. As part of this process, Eddie Bauer US must file amended tax returns for its 2004, 2005 and 2006 taxation years. The desired outcome from this process is as follows:

- A reduction in the amount of Canadian taxable income due to increased income reported by Eddie Bauer US. The Monitor understands that Eddie Bauer US has sufficient losses to shelter the increased income that will result from this adjustment. However, the amendments will result in alternative minimum tax ("AMT") payable to the IRS by Eddie Bauer US; and

- A reduction in the Company's taxable income could potentially result in several million dollars of tax refunds, which would significantly exceed the AMT payable by Eddie Bauer US. The Monitor has been advised that the range of the potential refund is from nil to \$5 million.

The Monitor understands that this process is uncertain and typically lengthy (up to two years). It requires coordination among the Eddie Bauer Group, CRA and the IRS. Alvarez & Marsal LLC ("Alvarez"), Eddie Bauer US' financial advisor in the Chapter 11 Proceedings, has contacted several firms to spearhead the Competent Authority process. Since October, 2009, Alvarez and the Monitor have corresponded extensively on this issue and are now proposing that Gowlings be engaged for this purpose.

3.1 Gowlings Engagement Letter

A summary of the terms of the proposed Gowlings engagement letter is as follows:

- Parties: Given that the process involves amendments to Eddie Bauer US' tax returns, the engagement is proposed to be between the Company and Gowlings and acknowledged by Eddie Bauer US. In accordance with the August 20th Order, the Monitor would execute the engagement letter on the Company's behalf.
- Fees: The proposed engagement letter contemplates a contingency fee arrangement whereby Gowlings' fee would be based on the outcome of the Competent Authority process. The fee is to be calculated as 33% of the tax savings plus 33% of actual interest savings². Tax savings is defined as 36% (the Company's estimated marginal tax rate) of any income reduction accepted by CRA resulting from this process. For example, if tax savings of \$1 million results from the Competent Authority process, the fee payable to Gowlings would be \$118,800³ (plus 33% of the interest savings). Payment is due to Gowlings upon the issuance by CRA of a Notice of Reassessment reflecting an income reduction and/or interest savings. The basis for the contingency fee arrangement is set out in Section 3.2 of this Report.

² The income reduction and actual interest savings to which the fee will apply will be based on a notice of reassessment to be issued by CRA.

³ Calculated as follows: \$1 million x 33% (fee) x 36% (tax rate) = \$118,800.

- Termination of Services: Should the engagement be terminated by the Company prior to the completion of the mandate, the Company would be obligated for the fees incurred by Gowlings up to the date of termination, based on Gowlings' standard hourly billing rates (set out in the engagement letter) less a 25% discount.

A copy of the proposed Gowlings engagement letter is attached as Appendix "B". The engagement letter has been executed by Gowlings and acknowledged by Eddie Bauer US. The Monitor, on the Company's behalf, will execute the engagement letter should it be approved by this Honourable Court.

3.2 Recommendation re: Gowlings Retention

The Monitor recommends that Gowlings be retained on the basis of the proposed engagement letter for the following reasons:

- Eddie Bauer US, the Company's principal creditor, supports the retention of Gowlings - it has executed the proposed engagement letter;
- Alvarez, on behalf of Eddie Bauer US, has presented the issue and the proposed Gowlings engagement letter to the Unsecured Creditors Committee ("UCC") in the Chapter 11 Proceedings. The UCC has consented to the retention of Gowlings on the proposed terms;
- Gowlings has history working with Alvarez and the Eddie Bauer Group and has specific knowledge of this issue; and
- The Monitor is of the view that a contingency fee arrangement is appropriate in these circumstances given the speculative nature of the refund and the duration of the "Competent Authority" process. Accordingly, absent this arrangement, there is a possibility that Gowlings could be paid fees based on its hourly rate structure notwithstanding that a refund may never be collected. In addition, the Monitor understands that the contingency rates in the engagement letter are consistent with the contingency rates typically paid for these types of engagements.

4. CLAIMS PROCEDURE

The Claims Procedure Order solicited pre-filing claims against the Company, post-filing restructuring claims and claims against the Company's directors and officers. A summary of the claims filed in the Claims Procedure and the preliminary results of the Claims Procedure is provided in the table below:

Unsecured Creditor	No. of Claims Filed	Claims Filed (\$)	Claims Disallowed/Withdrawn (\$)	Total (\$)
Eddie Bauer US	1	12,676,878	-	12,676,878
CRA	14	2,620,362	-	2,620,362
Contingent claim	1	1,000,000	(1,000,000)	-
Other trade claims ⁴	15	67,964	(66,709)	1,255
Total	31	16,365,204	(1,066,709)	15,298,495

As the table reflects, the Company does not have any secured obligations. Further information on the four categories of claims filed in the Claims Procedure is as follows:

- i. Eddie Bauer US financed the Company's operations prior to and during the Restructuring Proceedings. The Monitor has performed a preliminary review of the proof of claim filed by Eddie Bauer US and has recently received further supporting documentation from Alvarez. This review process is ongoing. The claim of Eddie Bauer US is comprised of: (i) the amount owing by the Company to Eddie Bauer US as at the filing date (approximately \$7.3 million); (ii) intercompany advances since the commencement of the Restructuring Proceedings (approximately \$4.5 million); and (iii) a contingent claim under a letter of credit provided by Eddie Bauer US in respect of a customs bond posted by the Company (US\$430,000). It is not anticipated that there will be any exposure under the letter of credit, which expires on May 5, 2010.

⁴ Excludes two late filed claims in the amount of approximately \$39,000. The Monitor is in the process of dealing with these claims.

- ii. CRA has submitted three proofs of claim totalling approximately \$2.6 million and 11 “placeholder” claims (one for each of the Company’s tax accounts). CRA is performing various audits of the Company. CRA has advised that it expects these audits to be completed in December, 2009 and its amended proofs of claim to be filed in January, 2010. CRA’s audits are being facilitated by the Company’s former in-house tax employees and Deloitte & Touche Inc. (“Deloitte”), the Company’s former tax advisor engaged by the Monitor, on behalf of the Company, to address certain outstanding tax matters.
- iii. A contingent claim of \$1 million was filed in respect of a “slip and fall” incident that allegedly took place outside one of the Company’s retail locations on March 25, 2008. This claim was disallowed in accordance with the Claims Procedure on November 23, 2009 on the basis that there is no evidence that any injury which may have resulted from the incident was caused by the Company. The claimant has until December 8, 2010 to file a Notice of Dispute.
- iv. 15 claims totalling approximately \$68,000 were filed by the Company’s former trade creditors. Given that the Purchaser assumed the majority of the Company’s trade obligations under the Transaction, these claims were either disallowed or withdrawn by the creditors when contacted by the Monitor. As at the date of this Report, the Monitor has not received any Notices of Dispute in respect of the disallowances issued.

The “pacing” item in the administration of the Claims Procedure is the receipt of CRA’s amended proofs of claim. Once CRA’s audit process is complete and its amended proofs of claim are filed, the Monitor intends to work with the Company and Deloitte in order to reconcile those claims. Subject to resolving CRA’s claims, the Monitor intends to bring an application to distribute the proceeds of the Transaction to the Company’s unsecured creditors.

5. COMPANY’S REQUEST FOR AN EXTENSION

The Monitor supports the Company’s request for an extension of the stay of proceedings for the following reasons:

- The Company is acting in good faith and with due diligence; and

- An extension will provide the Company and the Monitor with the opportunity to complete the administration of the Claims Procedure.

Given the nature of the outstanding issues in the Claims Procedure, principally tax matters, the Monitor believes an extension of the stay until April 30, 2010 is reasonable as it should eliminate the need to bring a further motion solely for the purpose of extending the stay of proceedings.

5.1 Cash Flow

As at the date of this Report, there is approximately US\$10.4 million on deposit in the Trust Account. A statement of receipts and disbursements for the period ending December 1, 2009 is attached as Appendix “C”.

A cash flow projection has not been prepared for the stay extension period. The remaining costs in these proceedings (largely professional fees) are to be funded from the proceeds of the Transaction on deposit in the Trust Account, which are sufficient to cover post-filing expenses incurred, or to be incurred, through to the completion of these proceedings.

6. OVERVIEW OF THE MONITOR’S ACTIVITIES

In addition to the activities described in this Report, the Monitor’s activities have included:

- Corresponding with legal counsel to the Company and the Monitor in connection with all matters in these proceedings, including the Claims Procedure;
- Corresponding extensively with Deloitte, the Company’s tax advisor, and the Company’s former in-house tax advisors, regarding numerous tax issues which are currently in progress;
- Negotiating the proposed Gowlings engagement letter and corresponding with legal counsel and advisors to Eddie Bauer US in respect thereof;

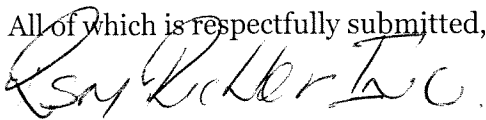
- Facilitating payments, filing certain tax returns and following up on potential tax refunds on behalf of the Company in accordance with the August 20th Order;
- Carrying out the Claims Procedure in accordance with the Claims Procedure Order, including reviewing proofs of claim submitted and issuing notices of disallowance;
- Corresponding with Alvarez on financial and accounting matters in connection with the Company's books and records for the purposes of administering the Claims Procedure;
- Responding to creditor inquiries regarding the CCAA proceedings and the Claims Procedure;
- Placing on the Monitor's website copies of materials filed in these proceedings;
- Corresponding with the Company's legal counsel concerning the issues described in this Report;
- Drafting this Report; and
- Other matters pertaining to the administration of this mandate.

7. CONCLUSION AND RECOMMENDATION

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

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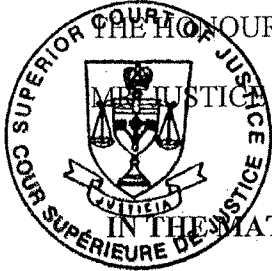
All of which is respectfully submitted,



**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 "**Chargees**") 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.

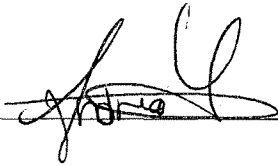
49. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

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.



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

JUL 07 2009

PER / PAR:



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

GOODMANS LLP

Barristers & Solicitors
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Toronto, Canada M5B 2M6

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dale.hill@gowlings.com

November 6, 2009

Tenere of Canada Inc. (fka Eddie Bauer of Canada Inc.)
c/o David Sieradzki
RSM Richter Inc.
200 King Street West., Suite 1100
Toronto, ON M5H 3T4

Dear Mr. Sieradzki:

Re: Engagement for Tax and Transfer Pricing Services

We are pleased that you have engaged Gowlings in connection with Tax and Transfer Pricing Services concerning Tenere of Canada Inc. ("Eddie Bauer Canada"). We understand that our retainer is subject to court approval pursuant to the *Companies' Creditors Arrangement Act* and will not become effective until such appropriate approval is obtained.

I will be the professional responsible for handling your requirements and reporting to you periodically. I will be assisted by other members of the Gowlings Transfer Pricing and Competent Authority Group, including Mark Kirkey and Jamal Hejazi. The advice that you receive from me, and from other members of the Transfer Pricing Group, will not be legal advice and the services that we provide directly to you will not be legal services. However, in reviewing your situation we may recommend that we seek the advice of a Gowlings tax lawyer on your rights and representation under the Income Tax Act and related regulations and agreements. We will indicate to you when information is required for the purposes of instructing legal counsel and will discuss with you which of the Gowlings solicitors would be responsible for providing you with legal services and advice.

This letter confirms the terms upon which you have engaged us and under which we are prepared to act. Please contact me immediately to discuss any revision or clarification that you may require. Any changes to these terms must be made in writing. While the scope of our engagement is limited as described below, we would welcome the opportunity to represent you in other matters. By executing and returning a copy of this engagement letter, you accept these terms of engagement and agree that they will apply to this matter and every other matter with respect to which we represent you until such time as you and we agree otherwise.

Scope of Representation

We confirm that you have retained us to file a Competent Authority request with the Canada Revenue Agency and the Internal Revenue Service and manage the competent authority process for the 2004 through 2006 taxation years of EBHI Holdings, Inc. (fka Eddie Bauer Holdings, Inc.) ("Eddie Bauer U.S.") and Eddie Bauer Canada. Members of Gowlings transfer pricing team will review documentation previously prepared for the company and may have some additional questions in developing the content of the competent authority requests. Further to our review and enquiries we will prepare the competent authority requests and provide you with our opinions and strategy on how to best achieve a successful resolution.

We expect that most of the work will be performed or supervised by Dale Hill and members of Gowlings Transfer Pricing and Competent Authority Group. However, we will assign other members of the Transfer Pricing Group or staff in our firm to provide transfer pricing services if in our judgment that becomes necessary or desirable. As noted above we will also discuss with you the involvement of particular solicitors who would be responsible should it be necessary to provide you with legal services.

Goals and Objectives

We understand your desired outcome is to have the Competent Authorities agree that additional management fees and royalties be paid by Eddie Bauer Canada to Eddie Bauer U.S. during the 2004 through 2006 taxation years. We will keep you updated on all developments and any changes in our recommended course of action. We will then provide the services necessary to carry out your instructions. Although we can make no guarantees about the outcome of your matter, we will utilize our expertise and experience to represent your interests to the best of our abilities.

Communication and Reporting

Two-way communication is very important to our relationship and our ability to serve you effectively. We will take instructions from and report to you from time to time by letter, e-mail, telephone, or in person. If you have a preferred mode of communication, have specific reporting needs, or ever need clarification of the information or materials sent to you, please contact us. If your contact information changes, please be sure to advise of the change immediately so that we can continue to communicate with you in a timely manner.

Information Management & Confidentiality

To enable us to meet your expectations and objectives, it is essential that you provide us with all factual information relevant and material to the subject matter of our representation. As you become aware of new or updated information, we ask that you share that new information with us.

All information provided concerning the business and affairs of Eddie Bauer Canada and Eddie Bauer U.S., acquired in the course of our professional relationship with you shall be held in strict confidence unless you expressly or implicitly authorize disclosure. We do point out that our ethical rules define a limited number of circumstances in which we are obligated to disclose

information that may be confidential. In such circumstances, we will not disclose more information than is required.

In the course of our representation, we collect only such information from individuals or organizations as is required for the purposes of providing our services to you. To the extent that any of that information relates to personal and private matters, the Firm has a Privacy Policy in place that explains how we manage this type of information. Please let us know if you would like to have a copy of that policy for review.

In addition to communications being confidential, if it is decided to involve the services of one or more Gowlings lawyers for the purpose of obtaining legal advice or services then communications with you will likely be protected by the law of solicitor-client privilege. The privilege only arises when you as a client reveal information in confidence to obtain legal advice or services. As noted above services provided directly by the members of the Transfer Pricing Group are not legal services and we will advise you if we recommend seeking legal advice or services from one or more Gowlings lawyers. Please let us know if you have any questions about our information management, confidentiality or the ambit of solicitor-client privilege.

Conflicts of Interest

We wish to avoid any circumstance in which you would regard our representation of another client to be inconsistent with our duties to and understandings with you. Because we represent a large number of clients in a wide variety of matters around the world, it is possible that we will be asked to represent a client whose interests are directly adverse to your immediate interests on other matters.

In that event, we will not undertake any representation directly adverse to your immediate interests if the subject of the other representation is related to the matter in which we currently represent you. However, if the subject of the other representation is unrelated to the matter in which we currently represent you, we will be free to undertake such an unrelated adverse representation without obtaining further consent from you at that time provided that:

- (a) we do not have any information that is confidential from you from this engagement that could be used to your disadvantage in the unrelated matter;
- (b) those in this Firm acting on the other matter are effectively screened from involvement in your matter, and
- (c) our other client has consented to our continued representation of you.

By accepting these terms of engagement, you are consenting to, and waiving any right you may have to object to, our representation of another client whose interests are directly adverse to your immediate interests in a matter unrelated to this engagement.

Fees for Services

Our fees for services are based on our assessment of the reasonable value of our services. To assist us in determining that value, we normally assign hourly rates to each member of our

Transfer Pricing and Competent Authority Group and maintain a record of the time spent and the services rendered on a particular matter. We will provide you with a monthly update on our accrued time and disbursements. In this case we have been asked to quote a fee contingent on our success in having the Canadian Competent Authority decrease reported operating income of Eddie Bauer Canada in the 2004 through 2006 taxation years.

The fee will be equal to 33% of the tax savings plus 33% of actual interest savings, directly resulting from the issues which we are addressing on your behalf. Tax savings is defined as 36% of any income reduction to Eddie Bauer Canada's operating income accepted by the Canada Revenue Agency applicable to the issues we will present to the Competent Authority. The rate of 36% is the approximate combined federal and provincial corporate tax rate during the applicable years. The income reduction and actual interest savings to which our fee will apply will be the amount of income reduction and interest refund in the notice of reassessments for Eddie Bauer Canada's 2004-2006 taxation years. In addition, if the income reduction applicable to the 2004-2006 taxation years is reassessed in a different year and the reassessment is agreed to by Eddie Bauer U.S., our fee will apply to any tax savings in that year.

GST will be applied, as required by law, to all fees.

All disbursements and other charges are included in the above fee.

Billing and Accounts

We strive to ensure that you are satisfied with both the quality of our services and the reasonableness of our accounts, and we invite you to discuss any questions or comments you may have about any fees and charges or the format of our accounts.

Statements of accounts reflecting the fee amount due for our services will be issued only once a notice of reassessment reflecting an income reduction and/or an interest savings related to the services described in this letter is received by Eddie Bauer Canada. Our statements of account are due and owing upon receipt and will be rendered at the conclusion of our mandate. Payment should be sent to Gowling Lafleur Henderson, LLP at the address shown on the statement. Accounts not paid within thirty days will be charged interest at the rate set out in the statement. In general, payments are applied first to the oldest outstanding statement.

Termination of Services

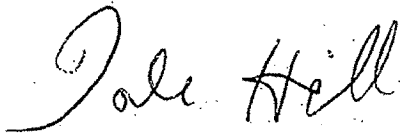
We trust that our relationship with you will be a satisfying one. Nevertheless, you are free to terminate our representation at any time, however, since the fee is based on a contingent payment, in the event of termination of this engagement by Eddie Bauer Canada, you remain liable to pay all fees and other charges incurred up to the date of termination. An amount equal to our normal hourly rates of C\$975 for Dale Hill, C\$750 for Mark Kirkey and C\$650 for Jamal Hejazi, multiplied by our hours recorded to the date of termination, less a 25% discount, will be payable if this engagement is terminated by Eddie Bauer Canada (or its court appointed representative) prior to completion of our engagement. Subject always to any applicable rule of court or code of conduct, we may terminate this agreement upon reasonable notice to you. Upon completion of the matter to which this engagement letter applies, or the earlier termination of the representation, our solicitor/client relationship will end, unless we expressly agree to continue

the representation on other matters. In such case, we shall have no continuing obligation to advise you on any matter unless we otherwise expressly agree in writing.

We appreciate the opportunity to serve you and look forward to working with you. Should you have any questions regarding our services, fees or billing arrangements, do not hesitate to contact us at your convenience.

Sincerely,

Gowling Lafleur Henderson LLP



Dale Hill
National Leader
Transfer Pricing and Competent Authority Group

Accepted and agreed this _____ day of 2009.

RSM RICHTER INC.
in its capacity as monitor of
Eddie Bauer of Canada, Inc.
and not in its personal capacity

Per _____
Authorized signature

Acknowledged by EBHI HOLDINGS, INC.

Per  _____
Authorized signature

RSM Richter Inc.
Eddie Bauer of Canada Inc.
Statement of Receipts and Disbursements
For the Period Ended December 1, 2009

	USD Account	CAD Account
Receipts		
Proceeds of sale of assets	11,000,000	-
Sundry collections	100	96,856
Interest income	6,035	-
Transfers between estate accounts	-	761,650
	<u>11,006,135</u>	<u>858,506</u>
Disbursements		
Transfers between estate accounts	700,000	-
Professional fees	281	504,472
GST on disbursements	-	25,263
PST remittances (for July, 2009)	-	229,926
Publication costs	-	20,570
Payroll obligations	-	2,771
Miscellaneous expenses	33	151
	<u>700,314</u>	<u>783,153</u>
Balance in Estate Accounts	<u><u>10,305,821</u></u>	<u><u>75,353</u></u>