



Court File No. CV-23-00694493-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE

)

FRIDAY, THE 28<sup>TH</sup>

CHIEF JUSTICE MORAWETZ

)

DAY OF APRIL, 2023

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 BBB CANADA LTD.  
(the "**Applicant**")

ASSIGNMENT, APPROVAL AND VESTING ORDER  
CTC TRANSACTION

**THIS MOTION**, made by the Applicant pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order, among other things: (i) approving the assignment of leases transaction (the "**CTC Transaction**") contemplated by the Omnibus Assignment and Assumption of Leases agreement dated April 21, 2023, as amended, supplemented or otherwise modified from time to time in accordance with the terms therein and this Order (the "**CTC Assignment Agreement**") among the Applicant, Bed Bath & Beyond Canada L.P. ("**BBB L.P.**"), and together with the Applicant, the "**BBB Entities**") and Canadian Tire Corporation, Limited ("**CTC Ltd.**"), and (ii) assigning to and vesting in CTC Ltd., Canadian Tire Real Estate Limited, Mark's Work Warehouse Ltd., or FGL Sports Ltd., as applicable (collectively, the "**CTC Entities**" and each, a "**CTC Entity**") all of BBB L.P.'s right, title and interest in and to the leases (as amended, modified, assigned and restated, collectively, the "**Leases**") and other purchased assets described in the CTC Assignment Agreement and set out in Schedule "A" hereto (the "**Purchased Assets**").

**ON READING** the Notice of Motion of the Applicant, the Affidavit of Wade Haddad sworn on April 21, 2023 including the exhibits thereto (the "**Haddad Affidavit**"), the Affidavit of

Wade Haddad sworn April 26, 2023 including the exhibits thereto, the Third Report of Alvarez & Marsal Canada Inc., in its capacity as Court-appointed monitor (in such capacity, the “**Monitor**”), dated April 24, 2023 (the “**Third Report**”), filed, and on hearing the submissions of respective counsel for the BBB Entities, the Monitor, and such other counsel as were present and listed on the Counsel Slip, no one else appearing although duly served as appears from the Affidavits of Service of Emily Paplawski, sworn April 21, 2023 and April 26, 2023, filed:

### **SERVICE AND DEFINITIONS**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that any capitalized term used and not defined herein shall have the meaning ascribed thereto in the Amended and Restated Initial Order in these proceedings dated February 21, 2023 (the “**Initial Order**”).

### **APPROVAL OF CTC ASSIGNMENT AGREEMENT**

3. **THIS COURT ORDERS AND DECLARES** that the CTC Transaction is hereby approved, and the execution and delivery of the CTC Assignment Agreement by BBB L.P. is hereby authorized and approved, with such minor amendments as BBB L.P. and CTC Ltd. may agree to with the consent of the Monitor. BBB L.P. is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the CTC Transaction and for the conveyance of the Leases to the applicable CTC Entity pursuant to the CTC Assignment Agreement and the Monitor shall be authorized to take such additional steps in furtherance of its responsibilities under the CTC Assignment Agreement.
4. **THIS COURT ORDERS** that upon delivery of a Monitor’s Certificate to BBB L.P. and CTC Ltd., substantially in the form attached as Schedule “B” hereto (the “**Monitor’s Certificate**”):

- (a) all of BBB L.P.’s right, title, and interests in and to the Purchased Assets described in the CTC Assignment Agreement and set forth under the header “CTC Assignment Agreement Leases” in Schedule “A” hereto (collectively, the “**CTC**”



**Assignment Agreement Leases**” and each, a **“CTC Assignment Agreement Lease”**) shall vest absolutely in and shall be sold, assigned, and transferred to the applicable CTC Entity free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the **“Claims”**) including, without limiting the generality of the foregoing:

- (i) any encumbrances or charges created by the Initial Order; and
- (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system;

(all of which are collectively referred to as the **“Encumbrances”**), provided that: (A) except as set forth in paragraph 4(a) or (b) or as may be otherwise agreed to by the applicable CTC Entity and the applicable landlord with respect to a Lease, nothing herein shall affect the rights and remedies of such landlord against such CTC Entity that may arise under or in respect of a Lease; and (B) the Claims and the Encumbrances referred to herein shall not include permitted encumbrances identified in, or pursuant to, the CTC Assignment Agreement. For greater certainty, this Court orders that (i) all of the Encumbrances affected or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets; (ii) nothing in this Order shall affect the rights and remedies under and pursuant to any landlord consent agreement (a **“Consent Agreement”**) executed with respect to the CTC Assignment Agreement; and (iii) nothing in this Order shall affect the rights and remedies of a landlord against an indemnifier with respect to a Lease (each an **“Indemnifier”**, including but not limited to Bed Bath & Beyond Inc.) arising from any and all indemnity agreements existing between a landlord and an Indemnifier (provided that, for the avoidance of doubt, such indemnity

agreements shall be subject to the terms of any applicable Consent Agreement);  
and

- (b) the landlords under the respective Leases are prohibited from exercising any rights or remedies under the Leases, and shall be forever barred, enjoined and estopped from taking such action, by reason solely of:
  - (i) any defaults arising from the insolvency of the BBB Entities or any of their affiliates;
  - (ii) the commencement of these CCAA proceedings;
  - (iii) any defaults and/or recapture rights which arise upon the assignment of the Leases to the applicable CTC Entity.; or
  - (iv) BBB L.P. having breached a non-monetary obligation under the Lease unless, (A) the applicable landlord under a Lease and the applicable CTC Entity under such Lease have agreed otherwise; or (B) (i) such non-monetary breach arises or continues after the Lease is assigned to the applicable CTC Entity; (ii) such non-monetary breach is capable of being cured by the applicable CTC Entity; and (iii) the applicable CTC Entity has failed to remedy the default after having received notice of such default pursuant to the terms of the Lease,

and are hereby deemed to waive any defaults relating thereto. For greater certainty, and without limiting the foregoing, no landlord under a Lease shall rely on a notice of default sent prior to the filing of the applicable Monitor's Certificate to terminate a Lease as against the applicable CTC Entity.

5. **THIS COURT ORDERS** that no CTC Assignment Agreement Lease may be assigned unless all amounts owing in respect of monetary defaults under the applicable CTC Assignment Agreement Lease, other than those arising by reason only of the BBB Entities' insolvency, the commencement of these CCAA proceedings, or BBB L.P.'s failure to perform a non-monetary obligation, are paid on the Closing Date (as defined below), or such later date as may be agreed to by the applicable CTC Entity and the applicable landlord under the Lease on prior written notice



to the Monitor (the “**Closing Date**” being the date of the delivery of the applicable Monitor’s Certificate).

6. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the proceeds, net of fees payable to RVC pursuant to the Exclusive Listing Agreement (each as defined in the Haddad Affidavit) and other applicable amounts, from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of a Monitor’s Certificate, all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

7. **THIS COURT ORDERS** that upon delivery of a Monitor’s Certificate, except as expressly set out to the contrary in any agreement between BBB L.P., CTC Ltd., the applicable CTC Entity and the applicable landlord under the Lease, the applicable CTC Entity shall be entitled to all of the rights and benefits and subject to all of the obligations as tenant pursuant to the terms of the applicable Leases and registrations thereof and may enter into and upon and hold and enjoy such premises contemplated by the applicable Leases and, if applicable, any renewals thereof, for its own use and benefit, all in accordance with and subject to the terms of the applicable Leases, without any interruption from BBB L.P. or the landlords under the Leases.

8. **THIS COURT ORDERS** that notwithstanding anything contained in this Order, nothing shall derogate from the obligations of the applicable CTC Entity to assume the applicable Leases and to perform its obligations under the applicable Leases, as set out in the CTC Assignment Agreement, except as expressly set out to the contrary in any agreement between BBB L.P., CTC Ltd., the applicable CTC Entity and the applicable landlord under the Lease.

9. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of each of the Monitor’s Certificates, forthwith after delivery thereof.

#### **GENERAL**

10. **THIS COURT ORDERS** that, notwithstanding:


- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the “BIA”) in respect of any of the BBB Entities and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of any of the BBB Entities;

the vesting of the Purchased Assets in the applicable CTC Entity pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the BBB Entities and shall not be void or voidable by creditors of any of the BBB Entities, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

11. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

12. **THIS COURT HEREBY REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the BBB Entities, 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 BBB Entities 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 BBB Entities and the Monitor and their respective agents in carrying out the terms of this Order.

13. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of the date of this Order without the need for entry or filing.



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**SCHEDULE "A"**  
**LEASES**

(See attached)



## LEASE ASSIGNMENT AND ASSUMPTION AGREEMENT

### CTC Assignment Agreement Leases:

1. Omnibus Assignment and Assumption of Leases agreement among BBB LP, Canadian Tire Corporation, Limited and Bed Bath & Beyond Inc., dated April 21, 2023, in respect of the following Leases:

- (a) Lease dated December 24, 2008, between North American (Park Place) Corporation and 9613714 Canada Inc., as successors in interest to North American (Park Place) Corporation, and BBB LP (Park Place - Store 2009);
- (b) Lease dated February 2, 2009, between TPP Investments II Inc. and PSS Investments II Inc., as successors in interest to Sunstone Opportunity (2007) Realty Trust, and BBB LP (845 Marine Drive - Store 2019);
- (c) Lease dated February 18, 2010, between Southpointe Plaza Inc., and BBB LP (Southpointe Common - Store 2020);
- (d) Lease dated October 25, 2011, between 1445006 Alberta Inc. and BBB LP (Emerald Hills Centre – Store 2030);
- (e) Lease dated March 27, 2012, between Wonderland Power Centre Inc. and BBB LP (Westwood Power Centre – Store 2035);
- (f) Lease dated June 8, 2012, between 1651051 Alberta Ltd. and BBB LP (Westgate Home Centre – Store 2037);
- (g) Lease dated February 9, 2015, between Riotrin Properties (Kingston) Inc. and BBB LP (Riocan Centre Kingston – Store 2048);
- (h) Lease dated May 26, 2015, between Langley City Square Properties Ltd. and BBB LP (Langley City Square – Store 2050);
- (i) Lease dated October 3, 2017, between Skyline Retail Real Estate Holdings Inc., as successor in interest to Medicine Hat Hwy 1 Properties Inc., and BBB LP (Medicine Hat Mall – Store 2054);



- (j) Lease dated September 4, 2018, between RioKim Holdings (Ontario) Inc. and BBB LP (Sudbury New Millennium Centre – Store 2056); and
- (k) Lease dated December 21, 2018, between RioCan Holdings (Oakville Place) Inc. and BBB LP (Oakville Place – Store 3711).

**SCHEDULE "B"**  
**FORM OF MONITOR'S CERTIFICATE**

Court File No. CV-23-00694493-00CL

**ONTARIO**  
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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 BBB CANADA LTD.

**MONITOR'S CERTIFICATE**  
**CTC TRANSACTION**

**RECITALS**

A. All undefined terms in this Monitor's Certificate have the meanings ascribed to them in the Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated April 28, 2023 (the "**Assignment Order**").

B. Pursuant to the Assignment Order, the Court approved the CTC Assignment Agreement and provided for the vesting in the applicable CTC Entity of BBB L.P.'s right, title and interest in and to the Purchased Assets described in the CTC Assignment Agreement, which vesting is to be effective with respect to the Purchased Assets described in the CTC Assignment Agreement upon the delivery by the Monitor to CTC Ltd. and BBB L.P. of a certificate confirming (i) the conditions to closing as set out in the CTC Assignment Agreement have been satisfied or waived by CTC Ltd. and BBB L.P., as applicable; and (ii) the CTC Transaction has been completed to the satisfaction of the Monitor.

**THE MONITOR CERTIFIES** the following:

1. Canadian Tire Corporation, Limited (the "**Assignee**") has paid and BBB L.P. has received the Purchase Consideration payable on the Closing Date pursuant to the CTC Assignment

Agreement between, *inter alios*, the Assignee and BBB L.P. (each as defined in the CTC Assignment Agreement);

2. The Monitor has received written notice from the Assignee and BBB L.P. that the conditions to closing as set out in the CTC Assignment Agreement have been satisfied or waived by the Assignee and BBB L.P., as applicable; and

3. The CTC Transaction has been completed to the satisfaction of the Monitor.

This Monitor's Certificate was delivered by the Monitor at \_\_\_\_\_ [TIME] on \_\_\_\_\_ [DATE].

**Alvarez & Marsal Canada Inc.**, in its capacity as Monitor of BBB Canada Ltd. and Bed Bath & Beyond Canada L.P., and not in its personal or corporate capacity

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



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

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AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF BBB CANADA LTD.

Applicant

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**ASSIGNMENT, APPROVAL AND VESTING  
ORDER**

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