

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

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

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

Applicant

MOTION RECORD OF THE APPLICANT
(Motion for Amended and Restated Initial Order and Sale Approval Order)

February 15, 2023

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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 BBB CANADA LTD.**

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

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

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

Applicant

INDEX

| Tab | | Page No. |
|------------|---|-----------------|
| 1. | Notice of Motion, dated February 15, 2023 | 21 |
| 2. | Affidavit of Holly Etlin, sworn February 15, 2023 | 29 |
| A. | Exhibit "A" – Initial Order dated February 10, 2023 | 49 |
| B. | Exhibit "B" – Endorsement dated February 13, 2023 | 68 |
| C. | Exhibit "C" – Affidavit of Holly Etlin, sworn February 9, 2023 (without exhibits) | 76 |
| D. | Exhibit "D" – BBB Canada's letter to Landlords | 130 |
| E. | Exhibit "E" – Internal Memo to Canadian Associates | 133 |
| F. | Exhibit "F" – Consulting Agreement | 135 |
| G. | Exhibit "G" – Confidential Exhibit | 159 |
| 3. | Draft Amended and Restated Initial Order | 162 |
| 4. | Blackline of Amended and Restated Initial Order | 182 |
| 5. | Draft Sale Process Order | 203 |

TAB 1

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

**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

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

Applicant

NOTICE OF MOTION

(Motion for Amended and Restated Initial Order and Sale Approval Order)

The Applicant will make a motion before the Honourable Chief Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) on February 21, 2023, at 9 a.m. (ET), or as soon after that time as the motion may be heard by judicial videoconference via Zoom at Toronto, Ontario. The videoconference details will be circulated when provided by the Court.

PROPOSED METHOD OF HEARING: The motion is to be heard by videoconference.

THE MOTION IS FOR:

1. An Amended and Restated Initial Order substantially in the form included at **Tab 3** of the Motion Record (the “**ARIO**”):

- (a) increasing the amount of the Administration Charge to \$1.25 million and the D&O Charge to \$8.25 million (each as defined in the Initial Order);
- (b) approving the key employee retention plan (the “**KERP**”) as described in the Affidavit of Holly Etlin sworn February 15, 2023 (the “**Second Etlin Affidavit**”)

and granting a Court-ordered charge (the “**KERP Charge**”) as security for payments under the KERP;

(c) directing that the KERP, which is attached as Confidential Exhibit G to the Second Etlin Affidavit, be treated as confidential and sealed, and not form part of the public record, pending further order of this Court; and

(d) extending the Stay Period (defined below) until and including May 1, 2023.

2. An Order substantially in the form included at **Tab 5** of the Motion Record (the “**Sale Approval Order**”) approving the Consulting Agreement and the Sale Guidelines (each as defined below) and authorizing Bed Bath & Beyond Canada L.P. (“**BBB LP**”, and together with the Applicant, “**BBB Canada**”), with the assistance of the Consultant (as defined below), to undertake a liquidation process in accordance with the terms of the Sale Approval Order, the Consulting Agreement and the Sale Guidelines.

THE GROUNDS FOR THE MOTION ARE:

3. On February 10, 2023, the Applicant was granted protection under the *Companies’ Creditors Arrangement Act*, RSC 1985 c C-36 (the “**CCAA**”) pursuant to an Initial Order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List). The Initial Order extended the benefits of the protections and authorizations under the Initial Order to BBB LP.

4. Alvarez & Marsal Canada Inc. was appointed as monitor (the “**Monitor**”).

ARIO***a) Administration Charge and D&O Charge***

5. The Administration Charge and the D&O Charge were each set at an amount appropriate for the first 10 days of this CCAA proceeding. BBB Canada is seeking to increase the Administration Charge and the D&O Charge to amounts that are fair and reasonable going forward, in light of the circumstances of these proceedings and BBB Canada's business.

6. With the concurrence of the Monitor, BBB Canada is now seeking to increase the Administration Charge to \$1.25 million and the D&O Charge to \$8.25 million.

b) KERP

7. The Applicant is seeking approval of the KERP for three non-store employees and the granting of the KERP Charge up to a maximum aggregate amount of \$161,000 as security for payments under the KERP.

8. The KERP was developed by BBB Canada, in consultation with the Monitor, to facilitate the continued participation of three key employees of BBB Canada who each respectively have in-depth knowledge of BBB Canada's business, including in particular, its payroll, operations and facilities.

9. The KERP provides appropriate incentives for BBB Canada's key employees to remain in their current positions and ensures that they are properly compensated for their assistance in the liquidation and wind-down process.

c) Stay Period

10. The Initial Order granted a stay of proceedings until February 21, 2023, or such later date as this Court may order (the “**Stay Period**”). BBB Canada is seeking to extend the Stay Period until May 1, 2023 to align with the targeted completion date for the liquidation process (April 30, 2023).

11. BBB Canada is also seeking an extension of the temporary stay granted in the Initial Order of all proceedings against Bed Bath & Beyond Inc. (“**BBBI**”) arising out of or in connection with the BBBI Indemnities (as defined in Second Etlin Affidavit) to May 1, 2023. BBB Canada believes that such extension of the temporary stay is necessary to allow it the breathing space and time necessary to complete an orderly liquidation while engaging in good faith with landlords with respect to the BBBI Indemnities. BBB Canada also believes that such extension of the temporary stay is necessary to avoid disrupting BBBI’s ongoing restructuring efforts, which remain precarious.

Sale Approval Order

12. BBB Canada is intending to wind-down the Canadian business in a fair and orderly manner. In order to maximize the value of its merchandise (“**Merchandise**”) and owned furnishings, trade fixtures, equipment and improvements to real property (“**FF&E**”), BBB Canada is seeking to:

- (a) retain a joint venture led by Hilco Merchant Retail Solutions ULC (the “**Consultant**”) pursuant to a Consulting Agreement, dated February 15, 2023 (the “**Consulting Agreement**”) to complete a liquidation of the Merchandise and FE&E

that are located in the Canadian retail stores, the warehouse, and the corporate office in Mississauga; and

- (b) establish sale guidelines for the orderly liquidation of the Merchandise and FF&E in Canada (the “**Sale Guidelines**”).

13. The proposed liquidation of BBB Canada’s Merchandise and FF&E is currently contemplated to run for ten weeks (until April 30, 2023), which date can be extended or abridged by BBB Canada and the Consultant, in consultation with the Monitor.

14. The proposed liquidation process set out in the Consulting Agreement and the Sale Guidelines was designed by BBB Canada and the Consultant, in consultation with the Monitor. The proposed liquidation process will maximize the value realized from the sale of BBB Canada’s Merchandise and FF&E for the benefit of stakeholders. In addition, engaging the Consultant to assist with the sale of the Merchandise and FF&E will produce better results than attempting to liquidate without professional assistance. The Consulting Agreement is expressly subject to, among other things, approval of this Court.

Other Grounds

15. The provisions of the CCAA, including s. 11.02, and the inherent and equitable jurisdiction of this Honourable Court.

16. Rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, and section 106 and 137 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended

17. Changes to Commercial List operations in light of COVID-19 dated March 16, 2020.
18. Such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

1. The Affidavit of Holly Etlin, sworn February 9, 2023;
2. The Affidavit of Holly Etlin, sworn February 15, 2023;
3. Pre-Filing Report of the Proposed Monitor;
4. First Report of the Monitor; and
5. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

February 15, 2023

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Lawyers for the Applicant

TO: THE SERVICE LIST

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

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

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

**NOTICE OF MOTION
(Motion for Amended and Restated Initial Order and Sale
Approval Order)**

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TAB 2

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

**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

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

Applicant

AFFIDAVIT OF HOLLY ETLIN

I, Holly Etlin, of the City of New York, in the State of New York, MAKE OATH AND
SAY:

1. I am the Interim Chief Financial Officer ("**Interim CFO**") of Bed Bath & Beyond Inc. ("**BBBI**"), the ultimate parent corporation of BBB Canada Ltd. (the "**Applicant**") and Bed Bath & Beyond Canada L.P. ("**BBB LP**", and together with the Applicant, "**BBB Canada**"). I have served in the capacity of Interim CFO of BBBI since February 2, 2023. I am also a Managing Director at AlixPartners, LLP ("**AlixPartners**"). AlixPartners has served as the financial advisor to BBBI and its various U.S. and Canadian subsidiaries, including BBB Canada (collectively, the "**Bed Bath & Beyond Group**") since 2022. I have worked in various positions at AlixPartners since 2007. I have more than 30 years of experience in providing turnaround services for companies in the retail, distribution, consumer products, financial services, media, and hospitality industries and have frequently been appointed as Interim CEO, Interim CFO, and Chief Restructuring Officer of these businesses. I am admitted to the American College of Bankruptcy and the International Insolvency Institute and am a Certified Turnaround Professional.

2. I am familiar with the Bed Bath & Beyond Group's day-to-day operations, business and financial affairs, and books and records and have personal knowledge of the matters deposed to in this Affidavit. Where I have relied on other sources for information, I have stated the source of my information and I believe such information to be true. In preparing this Affidavit, I consulted with BBB Canada's legal, financial, and other advisors and with other members of BBB Canada's and BBBI's senior management teams.

3. This Affidavit is made in support of an application by BBB Canada for:

- (a) an Amended and Restated Initial Order (the "**ARIO**"), among other things, extending the Stay Period (as defined below) to May 1, 2023, increasing the Administration Charge and the D&O Charge (each as defined below), approving a key employee retention plan for three non-store employees (the "**KERP**") and granting a Court-ordered charge (the "**KERP Charge**") as security for payments under the KERP; and
- (b) a Sale Approval Order (the "**Sale Approval Order**"), among other things, approving the Consulting Agreement and the Sale Guidelines (each as defined below) and authorizing BBB LP, with the assistance of the Consultant (as defined below), to undertake a liquidation process in accordance with the terms of the Sale Approval Order, the Consulting Agreement and the Sale Guidelines.

4. All references to monetary amounts in this Affidavit are in Canadian dollars unless noted otherwise.

A. Overview of BBB Canada's Activities since the Initial Order

5. On February 10, 2023, BBB Canada was granted protection under the *Companies' Creditors Arrangement Act*, RSC 1985 c C-36 (the "CCAA") pursuant to an Initial Order (the "**Initial Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**"). A copy of the Initial Order is attached hereto as **Exhibit "A"**. A copy of the Court's Endorsement issued in connection with the Initial Order is attached hereto as **Exhibit "B"**.

6. In support of the Initial Order, I swore an Affidavit dated February 9, 2023 (the "**Initial Order Affidavit**"), which described, among other things, the events leading to BBB Canada's insolvency, its urgent need for relief under the CCAA, and its intended liquidation and orderly wind-down within these CCAA proceedings. A copy of my Initial Order Affidavit (without exhibits) is attached hereto as **Exhibit "C"**.

7. The Initial Order, among other things: (i) appointed Alvarez & Marsal Canada Inc. as monitor within these CCAA proceedings (the "**Monitor**"); (ii) granted a stay of proceedings in favour of the Applicant until and including February 21, 2023, or such later date as the Court may order (the "**Stay Period**"); (iii) extended the stay of proceedings and other benefits and requirements of the Initial Order and the CCAA to BBB LP; (iv) granted a stay of any proceeding against BBBI arising out of or in connection with any indemnity, guarantee, or surety relating to a lease of real property by BBB LP or the Applicant (the "**BBBI Indemnities**") until and including February 21, 2023; (v) granted a charge as security for the respective fees and disbursements of counsel to BBB Canada, the Monitor and Monitor's counsel relating to services rendered in respect of BBB Canada (the "**Administration Charge**"); and (vi) granted a charge in favour of the directors and officers of BBB Canada (the "**D&O Charge**").

8. Since the granting of the Initial Order, BBB Canada, in close consultation and with the assistance of the Monitor, has been working in good faith and with due diligence to:

- (a) stabilize its business and operations as part of these CCAA proceedings;
- (b) advise its stakeholders, including all landlords, employees and others, of the granting of the Initial Order;
- (c) engage in preliminary discussions with counsel to certain landlords regarding the relief being sought in the proposed ARIO, the Sale Guidelines and the proposed liquidation process;
- (d) develop sale guidelines and finalize arrangements with Hilco Merchant Resources, LLC (“**Hilco**”) (on behalf of the Consultant) for the orderly liquidation of all merchandise (“**Merchandise**”) and owned furnishings, trade fixtures, equipment and improvements to real property (“**FF&E**”) that are located in each of the Bed Bath & Beyond and buybuy BABY retail stores located in Canada and, with respect to FF&E, the warehouse leased by BBB Canada in Surrey, B.C. and the corporate office in Mississauga; and
- (e) respond to numerous creditor and stakeholder inquiries regarding these CCAA proceedings.

9. I am advised by David Rosenblat at Osler, Hoskin & Harcourt LLP (“**Osler**”), counsel for BBB Canada, and believe that, promptly after obtaining the Initial Order, Osler (on behalf of BBB Canada) sent letters to all landlords of BBB Canada’s Canadian retail locations advising that BBB Canada had applied for and been granted an Initial Order under the CCAA, providing a link to the

Monitor's Website (as defined below) and directing the recipient to the Initial Order. The letters further advised that:

- (a) in connection with these CCAA proceedings, BBB Canada intends to wind-down its operations and conduct store closings at each of its 54 Bed Bath & Beyond stores and 11 buybuy BABY stores with the assistance of a third-party liquidator;
- (b) BBB Canada intends to seek Court approval of a proposed liquidation agreement and typical sale guidelines at a hearing to be scheduled for February 21, 2023 and anticipates that the liquidation sales will begin shortly after Court approval of same; and
- (c) the Initial Order stays all proceedings or enforcement processes against BBB Canada and any proceedings against BBBI arising out of or in connection with the BBBI Indemnities until and including February 21, 2023.

Attached as **Exhibit "D"** is an example of BBB Canada's letter to each landlord, all of which are in substantially the same form.

10. In addition to the landlords, BBB Canada completed the following employee outreach promptly after obtaining the Initial Order on February 10, 2023:

- (a) at approximately 2:00 p.m. ET, Ms. Mara Sirhal (one of the Applicant's two directors and the Executive Vice President, Brand President (Bed Bath & Beyond) at BBBI), conducted a conference call with all BBB Canada store managers, district managers and corporate employees to advise of the Bed Bath & Beyond Group's difficult decision to wind-down the Canadian operations, the issuance of the Initial

Order, and the expected impact of these CCAA proceedings on Canadian employees;

- (b) at approximately 4:00 p.m. ET, Ms. Sirhal and Mr. Greg Dyer (the Vice President, GM, Bed Bath & Beyond – Canada) issued (i) an internal memo to all Canadian associates, a copy of which is attached hereto as **Exhibit “E”**, and (ii) a leader toolkit and customer FAQ sheet to all store managers; and
- (c) commencing at approximately 4:15 ET and continuing throughout the following days, each store manager held a meeting with his/her staff to discuss these CCAA proceedings and provide information about the intended wind-down of BBB Canada’s operations.

11. Further, in accordance with the Initial Order:

- (a) on February 10, 2023, the Monitor posted the Initial Order and related motion materials on the Monitor’s website (the “**Monitor’s Website**”) at <https://www.alvarezandmarsal.com/BBBCanada>;
- (b) the Monitor will publish a notice in *The Globe and Mail* (National Edition) containing the information prescribed under the CCAA on February 16, 2023; and
- (c) on February 15, 2023, the Monitor sent a notice to, among others, all of BBB Canada’s known creditors who had claims over \$1,000. Additionally, on February 15, 2023, the Monitor made publicly available on the Monitor’s Website a list containing the names and addresses of those creditors and the estimated amounts of their claims (subject to the exclusions required by the Initial Order).

12. On February 10, 2023, a CaseLines database was established for these CCAA proceedings and all persons currently listed on the Service List (as defined in the Initial Order) were granted access thereto. A copy of the Initial Order and BBB Canada's motion materials and factum were uploaded to the CaseLines database that same day.

B. Sale Approval Order

(a) Liquidation Process

13. As foreshadowed in my Initial Order Affidavit, BBB Canada intends to wind-down the Canadian business in a fair and orderly manner. In order to maximize the value of its Merchandise and FF&E for the benefit of its stakeholders, BBB Canada is seeking the Court's approval of:

- (a) a Consulting Agreement with a contractual joint venture comprised of Hilco Merchant Retail Solutions ULC, Gordon Brothers Canada ULC, Tiger Asset Solutions Canada, ULC, and B. Riley Retail Canada ULC (the "**Consultant**") dated February 15, 2023 (the "**Consulting Agreement**") regarding the liquidation of the Merchandise and FE&E that are located in the Canadian retail stores, the warehouse, and the corporate office in Mississauga, a copy of which is attached hereto as **Exhibit "F"**; and
- (b) the proposed sale guidelines for the orderly liquidation of the Merchandise and FF&E in Canada (the "**Sale Guidelines**"), a copy of which is attached as Exhibit B to the Consulting Agreement.

14. The joint venture comprising the Consultant is led by Hilco Merchant Retail Solutions ULC, an affiliate of Hilco. Over the past two years, Hilco has been engaged, and is currently

engaged, by BBBI and Buy Buy Baby Inc. to facilitate numerous store closures including, most recently, the closure of approximately 150 Bed Bath & Beyond banner stores announced in August 2022 (as described in detail in my Initial Order Affidavit). More generally, Hilco has extensive experience conducting retail liquidations in Canada, including *Target Canada*, *Sears Canada*, *American Apparel Canada*, *BCBG Canada*, *Express Fashion Apparel*, *Danier Leather*, and *Forever 21*.

15. The joint venture led by Hilco's affiliate was accordingly selected by BBB Canada to assist in the liquidation of the Canadian retail stores based on its in-depth expertise and knowledge of the Bed Bath & Beyond Group's business, merchandise, and store operations, and its extensive experience conducting retail liquidations in Canada. BBB Canada concluded that: (i) the Consultant's services are necessary for a seamless and efficient large-scale store closing process and to maximize the value of the saleable Merchandise and FF&E; and (ii) the Consultant is qualified and capable of performing the required tasks in a value-maximizing manner.

16. The proposed liquidation of BBB Canada's Merchandise and FF&E is currently contemplated to run for ten weeks (until April 30, 2023), which date can be extended or abridged by BBB Canada and the Consultant, in consultation with the Monitor. Key terms of the Consulting Agreement and the Sale Guidelines include:

- (a) the Consultant is appointed as exclusive consultant for purposes of conducting a sale of BBB Canada's Merchandise and FF&E through a "Store Closing", "Everything Must Go", "Everything on Sale" or similar themed sale;

- (b) the sale will commence on the first business day following entry of the Sale Approval Order (the “**Sale Commencement Date**”) which shall, in no event, be later than February 24, 2023;
- (c) loyalty points, gift cards, gift certificates and similar items and programs issued by BBB Canada prior to the Sale Commencement Date will be honoured by BBB Canada until and including March 9, 2023;
- (d) during the sale, rent will be paid by BBB Canada to landlords in accordance with the Initial Order (i.e. twice monthly in equal payments on the first and fifteenth day or each month, in advance, but not in arrears);
- (e) all sales during the liquidation will be final with no returns accepted or allowed unless otherwise directed by BBB Canada;
- (f) as consideration for its services in accordance with the Consulting Agreement, the Consultant is entitled to payment of a base fee equal to 1.5% of the gross proceeds (net only of sales taxes) of Merchandise sold in the stores and 12.5% of the gross proceeds (net only of sales taxes) of FF&E. The Consultant is also entitled to payment of an incentive fee (the “**Incentive Fee**”) not to exceed \$1.5 million in the aggregate in the event net recoveries from the sale of Merchandise exceed certain net recovery thresholds, as determined in accordance with the Consulting Agreement,¹ as follows:

¹¹ Exhibit C of the Consulting Agreement sets forth an Expense Budget and terms with respect to the calculation of the Net Recovery Threshold.

| Net Recovery Threshold | Consultant Incentive Fee |
|-------------------------------|--------------------------------------|
| 39.50%-39.99% | An additional 0.875% of Net Proceeds |
| 40.00%-40.49% | An additional 1.125% of Net Proceeds |
| 40.50%-40.99% | An additional 1.375% of Net Proceeds |
| 41.00%-41.49% | An additional 1.625% of Net Proceeds |
| 41.50% and above | An additional 1.875% of Net Proceeds |

- (g) BBB Canada is responsible for all expenses of the sale, including (without limitation) all store level operating expenses, all costs and expenses related to BBB Canada's other retail store operations, and all of the Consultant's documented out of pocket expenses;
- (h) concurrently with the execution of the Consulting Agreement, BBB Canada is required to pay \$735,000 to the Consultant to be held by the Consultant on account of any final amounts owing by BBB Canada after conclusion of the liquidation process;
- (i) BBB Canada and the Consultant, in consultation with the Monitor, will reconcile all accounting matters every Wednesday for the prior calendar week and will complete a final reconciliation and settlement of all amounts payable pursuant to the Consulting Agreement no later than 45 days after termination of the liquidation sale; and
- (j) to the extent there is Merchandise or FF&E remaining following the sale termination date and disclaimer of the applicable real property lease, such Merchandise or FF&E shall be deemed abandoned and the applicable landlord will have the right to dispose of same as the landlord chooses, without any liability on the part of the landlord.

17. The Consultant has the right under the Consulting Agreement to supplement the Merchandise in the retail stores with additional goods (the “**Additional Consultant Goods**”) procured by the Consultant that are of like kind, and no lesser quality to the Merchandise in the stores, provided, however, that such Additional Consultant Goods may not exceed \$15 million in the aggregate and must be distributed amongst the Canadian retail stores such that no store receives more than 10% of the Additional Consultant Goods. The Consultant must pay BBB Canada an amount equal to 7.5% of the gross proceeds (net only of sales taxes) from the sale of all Additional Consultant Goods.

18. BBB Canada is of the view that augmentation of the Merchandise with the Additional Consultant Goods will contribute to the success of the proposed liquidation sale by encouraging increased foot traffic and ensuring that consumers find the mix and quality of goods they expect, thereby benefitting BBB Canada’s stakeholders by maximizing recoveries. It will also directly enhance recoveries for BBB Canada since the Consultant will pay 7.5% of the gross proceeds from all sales of Additional Consultant Goods to BBB Canada.

19. The Consulting Agreement is expressly subject to, among other things, approval of this Court. The realization process set out in the Consulting Agreement and the Sale Guidelines was designed by BBB Canada and the Consultant, in consultation with the Monitor. I expect that the proposed liquidation process will maximize the value realized from the sale of BBB Canada’s Merchandise and FF&E for the benefit of stakeholders. I also am of the view that engaging the Consultant to assist with the sale of the Merchandise and FF&E will produce better results than attempting to liquidate without professional assistance.

20. The Bed Bath & Beyond Group, in consultation with Hilco and AlixPartners, currently estimates that the aggregate net proceeds from the liquidation of the Merchandise and FF&E will be approximately \$32.7 million in Canada. The wind-down process must be commenced as soon as possible to maximize recoveries and limit operating costs, ensuring that BBB Canada can exit from all retail stores as soon as practicable and avoid further rent, employee costs, critical supplier/service provider payments, bank fees, and other ongoing amounts. In the circumstances, any delay in commencing the wind-down process could compromise the net recoveries generated from the sale of BBB Canada's Merchandise and FF&E.

(b) Sale Approval Order

21. The proposed Sale Approval Order requested by BBB Canada, among other things:

- (a) approves, authorizes and ratifies the Consulting Agreement, the Sale Guidelines and the transactions contemplated thereunder;
- (b) authorizes BBB LP, with the assistance of the Consultant, to conduct the proposed liquidation sale in accordance with the terms of the Sale Approval Order, the Consulting Agreement and the Sale Guidelines;
- (c) subject to the landlord notice provisions at paragraph 12 of the ARIO, authorizes BBB LP, with the assistance of the Consultant to market and sell the Merchandise, FF&E and Additional Consultant Goods in accordance with the Sale Guidelines, free and clear of all liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims; and

- (d) grants certain protections from liability in favour of the Consultant, including that:
- (i) the Consultant shall not be deemed to be an owner or in possession, care, control or management of the stores; (ii) the Consultant shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation; and (iii) BBB LP shall bear all responsibility for any liability whatsoever relating to claims of customers, employees and any other persons arising from events occurring at the stores during and after the term of the liquidation sale, or otherwise in connection with the sale, except to the extent that such claims are the result of events or circumstances caused or contributed to by the gross negligence or wilful misconduct of the Consultant, its employees, agents or other representatives, or otherwise in accordance with the Consulting Agreement.

22. I am advised by the Monitor and believe that the Monitor supports the proposed Consulting Agreement, the Sale Guidelines, including the proposed timeline, and BBB Canada's request for the Sale Approval Order.

C. Amended and Restated Initial Order

(a) Wage Earner Protection Program

23. I am advised by Sven Poysa at Osler, and believe that, the *Wage Earner Protection Program Act*, SC 2005, c 47, s 1 ("WEPPA") permits eligible former employees to collect certain eligible wages, including termination and severance pay, owed to such former employees where the former employer is the subject of CCAA proceedings and a court determines that the criteria prescribed by regulation are met. I am advised that the *Wage Earner Protection Program*

Regulations, SOR/2008-222 (the “**WEPP Regulation**”) requires that the Court determine whether the former employer is the former employer all of whose employees in Canada have been terminated other than any retained to wind down its business operations.

24. As part of the wind-down of the Bed Bath & Beyond Group’s Canadian operations, BBB Canada intends to provide all, or substantially all, of its Canadian employees with notice of termination of their employment with BBB Canada by no later than February 24, 2023.

25. It is expected that all employees who are required to assist in the wind-down of the Canadian operations, including the completion of the proposed liquidation sales, will be provided with working notice of termination ranging between 8 to 12 weeks. It is expected that a limited number of BBB Canada’s employees who are not required for the wind-down of the Canadian business will be given notice of termination, effective immediately upon the granting of the Sale Approval Order.

26. Paragraph 46 of the proposed ARIO deems any employee of the Applicant or BBB LP that receives a notice of termination to have received such notice of termination by no more than the third day following the date such notice of termination is delivered, if such notice of termination is sent by email, ordinary mail, expedited parcel, registered mail.

27. In order to assist eligible terminated employees of BBB Canada access payments in respect of eligible wages under WEPPA in a timely manner following their termination, BBB Canada is seeking a declaration in the ARIO that, pursuant to subsections 5(1)(b)(iv) and 5(5) of WEPPA, the Applicant and BBB LP meet the criteria prescribed by section 3.2 of the WEPP Regulation and their former employees are eligible to receive payments under and in accordance with WEPPA

following the termination of their employment. I understand that the Monitor supports the requested relief.

(b) KERP

28. The Applicant is seeking approval of the KERP for three non-store employees and the granting of the KERP Charge up to a maximum aggregate amount of \$161,000 as security for payments under the KERP.

29. The KERP was developed by BBB Canada, in consultation with the Monitor, to facilitate the continued participation of three key employees of BBB Canada who each respectively have in-depth knowledge of BBB Canada's business, including in particular, its payroll, operations and facilities. These employees have significant experience and specialized expertise that cannot be easily replicated or replaced. Each of these employees is required to guide the business through the contemplated orderly wind down process in order to preserve value for BBB Canada's stakeholders.

30. The KERP will provide the three participants with retention payments as an incentive to continue their employment, as required, through these CCAA proceedings. The Applicant proposes that the KERP be structured so that each of the three individuals will receive, in aggregate, 30% of their current annualized base salary, payable in three installments: (a) 15% payable following one month of service after the commencement of the proposed liquidation sales (for a total aggregate payment of \$24,121); (b) 15% payable following two months of service after the commencement of the proposed liquidation sales (for a total aggregate payment of \$24,121); and (c) 70% payable following the earlier of (i) four months of service after the commencement of the proposed liquidation sales or (ii) the date on which the participants' services are no longer

required, as determined by BBB Canada in a written notice of termination (for a total aggregate payment of \$112,565).

31. Any payments under the KERP are conditional upon the employee continuing to provide services to BBB Canada until such time as they are advised that they are no longer required to assist in the wind down, sale, or other matters in these CCAA proceedings.

32. Assuming BBB Canada is able to retain all three key employees, the total amount payable under the KERP will be a maximum of approximately \$161,000. As previously noted, the Applicant is seeking the KERP Charge to secure amounts payable under the KERP. The KERP Charge is proposed to rank behind the Administration Charge and the D&O Charge, but in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise.

33. A summary of the proposed KERP is attached hereto as **Confidential Exhibit “G”**. The KERP summary contains commercially sensitive information, including compensation information, as well as personal information relating to BBB Canada’s employees. BBB Canada therefore seeks an order that Confidential Exhibit G be sealed and not form part of the court record pending further order of the Court.

(c) Increase to the Administration Charge

34. The Administration Charge is described at paragraph 158 of my Initial Order Affidavit. The Initial Order approved the Administration Charge in the amount of \$0.55 million, which was sized only to reflect fees and disbursements expected to be incurred by BBB Canada’s counsel, the Monitor and Monitor’s counsel during the initial 10-day Stay Period. With the concurrence of the Monitor, BBB Canada is now seeking to increase the Administration Charge to \$1.25 million.

(d) Increase to the D&O Charge

35. The D&O Charge is described at paragraphs 159 to 163 of my Initial Order Affidavit. The Initial Order approved the D&O Charge for the initial 10-day Stay Period in the amount of \$7.5 million. With the concurrence of the Monitor, BBB Canada is now seeking to increase the D&O Charge to \$8.25 million.

(e) Amendment of Permitted Periodic Repayments

36. The Initial Order provides that any sweep rights exercised by the Lenders pursuant to the Amended Credit Agreement (each as defined in my Initial Order Affidavit) with respect to BBB Canada may only be exercised if BBB Canada continues to hold at least \$7.5 million of cash immediately after the applicable sweep and such swept funds constitute repayment of obligations under, and subject to, the Amended Credit Agreement.

37. Subsequent to the granting of the Initial Order, the Lenders and BBB Canada, in close consultation with the Monitor, undertook further discussions regarding both the minimum sweep threshold and the details of the sweep mechanism to ensure that any proposed sweeps would leave sufficient liquidity for the anticipated liquidation and wind-down of BBB Canada.

38. BBB Canada and the Lenders have agreed to amend the sweep provisions in the Initial Order to increase the minimum sweep threshold from \$7.5 million to \$9.5 million (the “**Minimum Balance**”), provided that effective March 27, 2023, the Minimum Balance will be reduced to \$6 million, and may be further reduced thereafter by BBB Canada with the consent of the Monitor. The updated Minimum Balance and declining minimum sweep threshold is intended to protect the ability of BBB Canada to fund these proceedings using its cash on hand, while recognizing that

such cash needs will decline as the liquidation process progresses and additional cash should therefore be available to the Lenders without any risk to BBB Canada.

(f) Extension of Stay of Proceedings of Derivative Claims

39. As discussed above, promptly after obtaining the Initial Order, Osler sent letters to all BBB Canada's landlords on February 10 and 13, 2023, advising that BBB Canada had applied for and been granted an Initial Order under the CCAA and requesting the contact information for each landlord's counsel. To date, Osler has received responses from 11 landlords providing counsel information and has commenced discussions regarding these CCAA proceedings, the relief being sought in the proposed ARIO, the Sale Guidelines, and the proposed liquidation process.

40. BBB Canada intends at the comeback hearing to seek an extension to May 1, 2023, of the temporary stay granted in the Initial Order of all proceedings against BBBI arising out of or in connection with the BBBI Indemnities. BBB Canada believes that such extension of the temporary stay is necessary to allow it the breathing space and time necessary to complete an orderly liquidation while engaging in good faith with landlords with respect to the BBBI Indemnities.

41. All rent payments to landlord in Canada are paid current and will be made on an ongoing basis throughout these CCAA proceedings in accordance with the Initial Order until the applicable lease is disclaimed and the premises vacated by BBB Canada, which as noted above, is expected to occur at the end of April – immediately prior to the expiration of the proposed extended Stay Period on May 1, 2023. BBB Canada is accordingly of the view that no landlord will be prejudiced by the requested extension to the temporary stay of proceedings and that such extension will provide the necessary time and space for constructive, good faith discussions to be undertaken by BBB Canada and the landlords regarding resolution of the BBBI Indemnities.

(g) Extension of Stay Period


42. The Applicant is seeking to extend the Stay Period up to and including May 1, 2023. The extension of the Stay Period is necessary and appropriate in the circumstances to allow for the proposed liquidation process to be undertaken and for BBB Canada to focus on the orderly wind down of the Canadian business. As noted above, the targeted completion date for the liquidation process is April 30, 2023.

43. I believe that BBB Canada has acted, and continues to act, in good faith and with due diligence in pursuing the orderly wind down of its business. As described above, BBB Canada has given notice of these CCAA proceedings to stakeholders including, most significantly, its landlords and employees. In consultation with the Monitor, BBB Canada has engaged, and will continue engaging, in discussions with its stakeholders as these CCAA proceedings progress.

44. The cash flow projections attached as Exhibit "O" to my Initial Order Affidavit demonstrate that BBB Canada will have access to sufficient liquidity to fund operations during the requested extension of the Stay Period.

SWORN BEFORE ME over video
teleconference this 15th day of February, 2023
pursuant to O. Reg 431/20, Administering
Oath or Declaration Remotely. The affiant was
located in the City of New York, in the State
of New York while the Commissioner was
located in the City of Toronto, in the Province
of Ontario.

}



Commissioner for Taking Affidavits
Viktor Nikolov (LSO No. 84503P)



Holly Etlin

THIS IS **EXHIBIT “A”** REFERRED TO IN THE AFFIDAVIT OF HOLLY ETLIN SWORN BEFORE ME over video teleconference this 15th day of February, 2023 pursuant to O. Reg 431/20, Administering Oath or Declaration Remotely. The affiant was located in the City of New York, in the State of New York while the Commissioner was located in the City of Toronto, in the Province of Ontario.



Commissioner for Taking Affidavits
Viktor Nikolov (LSO No. 84503P)



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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE

)

FRIDAY, THE 10TH

CHIEF JUSTICE MORAWETZ

)

DAY OF FEBRUARY, 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**")

INITIAL ORDER

THIS APPLICATION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), was heard this day via videoconference.

ON READING the affidavit of Holly Etlin sworn February 9, 2023 and the Exhibits thereto (the "**Etlin Affidavit**"), the pre-filing report of the proposed monitor, Alvarez & Marsal Canada Inc. ("**A&M**"), dated February 10, 2023, and on hearing the submissions of counsel for the Applicant and Bed Bath & Beyond Canada L.P. ("**BBB L.P.**", and together with the Applicant, the "**BBB Entities**"), A&M, and such other counsel who were present, and on reading the consent of A&M to act as the Court-appointed monitor of the BBB Entities (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 and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

DEFINED TERMS

2. **THIS COURT ORDERS** that capitalized terms that are used in this Order shall have the meanings ascribed to them in the Etlin Affidavit if they are not otherwise defined herein.

APPLICATION

3. **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies. Although not an Applicant, BBB L.P. shall enjoy the benefits of the protections and authorizations provided by this Order.

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the BBB Entities shall remain in possession and control of their respective current and future assets, licenses, 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 and the Orderly Wind-down (as hereinafter defined), the BBB Entities shall continue to carry on business in a manner consistent with the preservation of their business (the “**Business**”) and Property. The BBB Entities shall each be authorized and empowered to continue to retain and employ the employees, contractors, consultants, agents, advisors, 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 BBB Entities shall be entitled to continue to utilize the central cash management system currently in place as described in the Etlin Affidavit or, with the consent of the Monitor, 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 (each, a “**Cash Management Bank**”) 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 BBB Entities 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 BBB Entities, 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 any plan of compromise or arrangement that may be filed (hereinafter referred to as the “**Plan**”) with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System. During the Stay Period (as hereinafter defined), no Cash Management Bank shall, without leave of this Court, exercise any sweep remedy under any applicable documentation, subject to paragraph 12 of this Order.

6. **THIS COURT ORDERS** that the BBB Entities shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable prior to, 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) all outstanding or future amounts owing in respect of existing return policies and refunds;
- (c) until and including February 25, 2023, all outstanding amounts related to honouring existing gift cards issued before or on the date of this Order, discounts, or other amounts on account of customer programs or obligations existing before or on the date of this Order;
- (d) the fees and disbursements of any Assistants retained or employed by the BBB Entities in respect of these proceedings, at their standard rates and charges; and
- (e) with the consent of the Monitor, amounts owing for goods or services actually supplied to the BBB Entities prior to the date of this Order by:
 - (i) providers of payroll services;

- (ii) providers of credit, debit and gift card processing related services; and
- (iii) other third party suppliers up to a maximum amount of \$500,000, if, in the opinion of the BBB Entities, the supplier is critical to the Orderly Wind-down.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the BBB Entities shall be entitled but not required to pay all reasonable expenses incurred by the BBB Entities 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 BBB Entities following the date of this Order.

8. **THIS COURT ORDERS** that the BBB Entities 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, and (iii) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the BBB Entities in connection with the sale of goods and services by the BBB Entities, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order;
- (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 any of the BBB Entities; and

- (d) taxes under the *Income Tax Act* (Canada) or other relevant taxing statute giving rise to any statutory deemed trust amounts in favour of the Crown in right of Canada or any Province thereof or any political subdivision thereof or any other taxation authority.

9. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the BBB Entities 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, but for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of any of the BBB Entities, the making of this Order or the commencement of any insolvency proceeding) or as otherwise may be negotiated between the applicable BBB Entity and the landlord from time to time (“**Rent**”) for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. **THIS COURT ORDERS** that, except as specifically permitted herein, the BBB Entities 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 any of the BBB Entities to any of their respective creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business for the purpose of the Orderly Wind-down or pursuant to this Order or any other Order of this Court.

ORDERLY WIND-DOWN

11. **THIS COURT ORDERS** that the BBB Entities shall, subject to such requirements as are imposed by the CCAA or as otherwise ordered by this Court, 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 \$500,000 in any one transaction or \$2,500,000 in the aggregate; provided that, with respect to any leased premises, the BBB Entities may, subject to the requirements of the CCAA, vacate, abandon or quit the whole but not part of any leased premises;
- (b) terminate the employment of such of their employees or temporarily lay off such of their employees as the BBB Entities deem appropriate; and
- (c) apply to this Court for such approval, vesting or other Orders as may be necessary to consummate sale transactions for all or any part of the Property, including, without limitation, approval of a consulting or liquidation agreement concerning the liquidation of inventory, furniture, fixtures, and equipment forming part of the Property, and any related relief,

all of the foregoing to permit the BBB Entities to proceed with an orderly wind-down of the Business (the “**Orderly Wind-down**”).

PERIODIC REPAYMENTS

12. **THIS COURT ORDERS** that sweep rights pursuant to the Amended Credit Agreement may be exercised with respect to the BBB Entities; provided that (i) any swept funds shall constitute repayment of obligations under, and subject to the terms of, the Amended Credit Agreement, and (ii) such sweep rights may only be exercised if the BBB Entities will continue to hold cash in the amount of at least \$7,500,000 immediately after the applicable sweep.

STAY OF PROCEEDINGS

13. **THIS COURT ORDERS** that until and including February 21, 2023 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 any of the BBB Entities or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the prior written consent of the BBB Entities and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the BBB Entities, or their employees or representatives acting

in such capacities, or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court or the prior written consent of the BBB Entities and the Monitor.

14. **THIS COURT ORDERS** that until and including February 21, 2023, no Proceeding shall be commenced or continued against Bed Bath & Beyond Inc. (“**BBBI**”) arising out of or in connection with any indemnity, guarantee, or surety relating to a lease of real property by a BBB Entity without the consent of the BBB Entities and the Monitor or with leave of this Court; provided, however, that, without in any way altering, increasing, creating or eliminating any obligation or duty to mitigate losses or damages of any landlord of any BBB Entity (each, a “**Landlord**”), any Landlord claim pursuant to a guarantee in relation to any BBB Entity shall be unaffected and shall not be released or affected in any way in any Plan filed by the Applicant under the CCAA, or any proposal filed by the BBB Entities under the BIA.

15. **THIS COURT ORDERS** that, to the extent any prescription, time or limitation period relating to any Proceeding against or in respect of the BBB Entities that is stayed pursuant to this Order may expire, the term of such prescription, time or limitation period shall hereby be deemed to be extended by a period equal to the Stay Period.

NO EXERCISE OF RIGHTS OR REMEDIES

16. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, organization, governmental unit, body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the BBB Entities or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the BBB Entities and the Monitor, or leave of this Court, provided that nothing in this Order shall: (i) empower the BBB Entities to carry on any business which the BBB Entities are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by section 11.1 of the CCAA, (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 accelerate, discontinue, fail to honour, alter, interfere with, repudiate, rescind, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held by the BBB Entities, except with the written consent of the BBB Entities 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 any BBB Entity or statutory or regulatory mandates for the supply or license of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, cash management services, payroll and benefit services, insurance, freight services, transportation services, customs clearing, warehouse and logistics services, security services, management services, merchandise sourcing services, procurement services, utility or other services to the BBB Entities or the Business, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply or license of such goods or services, trademarks and other intellectual property as may be required by the BBB Entities, and that the BBB Entities 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 BBB Entities in accordance with normal payment practices of the BBB Entities or such other practices as may be agreed upon by the supplier or service provider and the applicable BBB Entity and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

19. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any

monies or otherwise extend any credit to any of the BBB Entities. 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 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the BBB Entities with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the BBB Entities 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 BBB Entities, if one is filed, is sanctioned by this Court or is refused by the creditors of the BBB Entities or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

21. **THIS COURT ORDERS** that the BBB Entities shall indemnify their respective directors and officers against obligations and liabilities that they may incur as directors or officers of the BBB Entities after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

22. **THIS COURT ORDERS** that the directors and officers of the BBB Entities 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 \$7,500,000, unless permitted by further Order of this Court, as security for the indemnity provided in paragraph 21 of this Order. The Directors' Charge shall have the priority set out in paragraphs 33-35 herein.

23. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (i) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (ii) the BBB Entities' 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 A&M is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the BBB Entities with the powers and obligations set out in the CCAA or set forth herein and that the BBB Entities and their shareholders or partners (as applicable), officers, directors, and Assistants shall advise the Monitor of all material steps taken by the BBB Entities pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

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 BBB Entities' receipts and disbursements;
- (b) liaise with Assistants, to the extent required, with respect to all matters relating to the Property, the Business, the Orderly Wind-down, and such other matters as may be relevant to the proceedings herein;
- (c) 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, the Orderly Wind-down, and such other matters as may be relevant to the proceedings herein;
- (d) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the BBB Entities, wherever located and to the extent that is necessary to adequately assess the BBB Entities' business and financial affairs or to perform its duties arising under this Order;
- (e) oversee and consult with the BBB Entities, any liquidation agent that is approved by this Court, and any Assistants retained, to the extent required, with respect to the Orderly Wind-Down;
- (f) assist each of the BBB Entities with respect to any foreign proceeding and monitor and report to this Court, as it deems appropriate on any such foreign proceeding;

- (g) 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; and
- (h) 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 the Monitor shall provide any creditor of the BBB Entities with information provided by the BBB Entities in response to reasonable requests for information made in writing by such creditor 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 BBB Entities 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 BBB Entities 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, neither the Monitor nor its employees and representatives acting in such capacities shall incur any liability or obligation as a result of the Monitor's appointment or the carrying out by it 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 BBB Entities shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on, or subsequent to the date of this Order, by the BBB Entities as part of the costs of these proceedings. The BBB Entities are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor, and the BBB Entities' counsel on a weekly basis and, in addition, the BBB Entities are hereby authorized to pay to the Monitor, counsel to the Monitor and counsel to the BBB Entities, retainers, *nunc pro tunc*, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

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.

ADMINISTRATION CHARGE

32. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and counsel to the BBB Entities 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 \$550,000 unless permitted by further Order of this Court, as security for their professional fees and disbursements incurred at their standard rates and charges, 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 33 and 35 herein.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

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

First – Administration Charge (to the maximum amount of \$550,000); and

Second – Directors' Charge (to the maximum amount of \$7,500,000).

34. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge or the Directors' Charge (together, 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.

35. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person notwithstanding the order of perfection or attachment; provided that the Charges shall rank behind Encumbrances in favour of any Persons that have not been served with notice of the application for this Order. The BBB Entities and the beneficiaries of the Charges shall be entitled to seek priority of the Charges ahead of such Encumbrances on a subsequent motion including, without limitation, on the Comeback Date (as hereinafter defined), on notice to those Persons likely to be affected thereby.

36. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court on notice to parties in interest, the BBB Entities shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges unless the BBB Entities also obtain the prior written consent of the Monitor and the beneficiaries of the Charges, or further Order of this Court.

37. **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**") thereunder 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 the 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 document, lease, sublease, offer to lease or other

agreement (collectively, an “**Agreement**”) which binds any of the BBB Entities and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by any BBB Entity of any Agreement to which it is 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; and
- (c) the payments made by the BBB Entities pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

38. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the BBB Entities’ interest in such real property leases.

SERVICE AND NOTICE

39. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in *The Globe and Mail* (National Edition) a notice containing the information prescribed under the CCAA, and (ii) within five (5) days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, or cause to be sent, in the prescribed manner or by electronic message to the e-mail addresses as last shown on the records of the BBB Entities, a notice to every known creditor who has a claim against the BBB Entities of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with subsection 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of the individuals who are creditors publicly available.

40. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the “**Service List**”). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor’s Website

(as hereinafter defined) as part of the public materials to be recorded thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

41. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: www.alvarezandmarsal.com/BBBCanada (the “**Monitor’s Website**”).

42. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol or the CCAA and the regulations thereunder is not practicable (including as a result of COVID-19), the BBB Entities, the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or electronic message to the BBB Entities’ creditors or other interested parties at their respective addresses (including e-mail addresses) as last shown in the books and records of the BBB Entities and that any such service, distribution or notice shall be deemed to be received on the earlier of (a) the date of forwarding thereof, if sent by electronic message on or prior to 5:00 p.m. Eastern Standard/Daylight Time (or on the next business day following the date of forwarding thereof if sent on a non-business day); (b) the next business day following the date of forwarding thereof, if sent by courier, personal delivery, facsimile transmission or electronic message sent after 5:00 p.m. Eastern Standard/Daylight Time; or (c) on the third business day following the date of forwarding thereof, if sent by ordinary mail.

43. **THIS COURT ORDERS** that the BBB Entities, the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true

copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile or other electronic transmission to the BBB Entities' creditors or other interested parties and their advisors and that any such service, distribution or notice shall be deemed to be received: (a) if sent by courier, on the next business day following the date of forwarding thereof; (b) if delivered by personal delivery or facsimile or other electronic transmission, on the day so delivered; and (c) if sent by ordinary mail, on the third business day after mailing. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations* (SOR/2013-221).

GENERAL

44. **THIS COURT ORDERS** that any interested party that wishes to amend or vary this Order shall be entitled to appear or bring a motion before this Court on a date to be set by this Court upon the granting of this Order (the "**Comeback Date**"), and any such interested party shall give not less than two (2) business days' notice to the Service List and any other party or parties likely to be affected by the Order sought in advance of the Comeback Date; provided, however, that the Chargees shall be entitled to rely on this Order as issued and entered and on the Charges and priorities set forth in paragraphs 33 and 35 hereof with respect to any fees, expenses and disbursements incurred, as applicable, until the date this Order may be amended, varied or stayed.

45. **THIS COURT ORDERS** that, notwithstanding paragraph 44 of this Order, the BBB Entities or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their powers and duties under this Order or in the interpretation or application of this Order.

46. **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 any of the BBB Entities, the Business or the Property.

47. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body or agency having jurisdiction in Canada or in the United States, 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

and agencies 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, or to assist the BBB Entities and the Monitor and their respective agents in carrying out the terms of this Order.

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

49. **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 without the need for entry or filing.



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

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

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

INITIAL ORDER

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Lawyers for the Applicant

THIS IS **EXHIBIT “B”** REFERRED TO IN THE AFFIDAVIT OF HOLLY ETLIN SWORN BEFORE ME over video teleconference this 15th day of February, 2023 pursuant to O. Reg 431/20, Administering Oath or Declaration Remotely. The affiant was located in the City of New York, in the State of New York while the Commissioner was located in the City of Toronto, in the Province of Ontario.



Commissioner for Taking Affidavits
Viktor Nikolov (LSO No. 84503P)

CITATION: BBB Canada Ltd., 2023 ONSC 1014
COURT FILE NO.: CV-23-00694493-00CL
DATE: 2023-02-13

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: 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 BED BATH & BEYOND CANADA LTD.**

Applicant

BEFORE: Chief Justice G.B. Morawetz.

COUNSEL: *Marc Wasserman, Shawn Irving, Dave Rosenblat and Emily Paplawski*, for the Applicant

Kevin Zych, Michael Shakra and Joshua Foster, for the Monitor, Alvarez & Marsal Canada Inc.

Evan Cobb, for JPMorgan Chase (ABL Lenders)

Wael Rostom and Jeffrey Levine, for Sixth Street Specialty Lending, Inc. (FILO Agent)

HEARD and

DETERMINED: February 10, 2023

REASONS: February 13, 2023

ENDORSEMENT

[1] At the conclusion of the hearing on February 10, 2023, the Initial Order was granted with reasons to follow. These are the reasons.

Introduction

[2] BBB Canada Limited (the “Applicant”) brings this application for an Initial Order and related relief under the *Companies’ Creditors Arrangement Act* (“CCAA”).

[3] While Bed Bath & Beyond Canada LP (“BBB LP” and together with the Applicant, “BBB Canada”) is not an applicant, the Applicant seeks to have the stay of proceedings and other benefits of the Initial Order under the CCAA extended to BBB LP.

[4] The Applicant also seeks a temporary stay of any proceeding against its parent company Bed Bath & Beyond Inc., (“BBBI”) and together with its various U.S. subsidiaries and BBB Canada, (the “Bed Bath & Beyond Group”) arising out of any indemnity, guarantee or surety relating to a lease of real property by BBB LP or the Applicant.

[5] The evidentiary basis for the requested relief is set out in the Affidavit of Holly Etlin, Interim Chief Financial Officer of the Bed Bath & Beyond Group.

[6] The Bed Bath & Beyond Group has been in financial difficulty for a number of years, suffering significant net losses since 2018 and over this period, BBB Canada has had a decline in revenues.

[7] Ms. Etlin states that in an effort to improve the Bed Bath & Beyond Group’s financial performance, former management embarked on a series of initiatives designed to transform the business. Unfortunately, the financial situation deteriorated. The Bed Bath & Beyond Group’s situation significantly worsened throughout 2022, with declining sales in both the United States and Canada, multiple credit rating downgrades, cash flow constraints, and significant inventory reductions.

[8] Ms. Etlin also states that the financial situation continued to decline in January 2023. The ABL Agent (as defined below) declared events of default and delivered notices of acceleration under both the ABL Facility and BBBI’s then US \$375 million FILO Facility (of which BBB LP is also a borrower and the Applicant is a guarantor), thereby causing the principal amount of such facilities, together with interest and other fees and obligations, to become immediately due and payable. The ABL Agent also declared cash dominion, which restricted the entire Bed Bath & Beyond Group, including BBB Canada, from spending any cash on hand.

[9] Very recently, BBBI announced a proposed underwritten public offering of shares (the “Offering”), which, if all conditions are met, will provide BBBI with additional time to continue its restructuring efforts for Bed Bath & Beyond Group’s business in the United States outside of a bankruptcy filing.

[10] Ms. Etlin states, however, that efforts to identify a going concern solution for Canada have not been successful. The Bed Bath & Beyond Group has concluded that there is not enough capital available to restructure both its business in the United States and properly restructure the Canadian business to achieve profitability.

[11] Ms. Etlin states that BBB Canada is not profitable on a standalone basis and after consideration of all strategic alternatives, the Bed Bath & Beyond Group has determined that it is no longer in a position to provide financial and operational support to BBB Canada. BBB Canada is insolvent and will be unable to satisfy its obligations. BBB Canada has commenced these proceedings in order to effect an orderly liquidation of its remaining inventory with assistance from a third-party professional liquidator and intends to vacate its leased retail stores and premises.

Business Structure

[12] The Applicant is a federal corporation incorporated pursuant to the *Canada Business Corporations Act* and has a registered office in Toronto, Ontario. The Applicant is a wholly owned subsidiary of BBBI, a corporation incorporated in the State of New York with a head office in Union, New Jersey. BBBI is the ultimate parent corporation of the entire Bed Bath & Beyond Group.

[13] BBB LP is a limited partnership formed under the laws of Ontario with its principal place of business in Richmond Hill, Ontario. The Applicant is the general partner and 99% unitholder of BBB LP and while BBB LP is not an applicant in this proceeding, the Applicant seeks to have the stay of proceedings and other provisions of the Initial Order extended to BBB LP. BBB LP is the operating entity in Canada which conducts substantially all of Bed Bath & Beyond's retail operations and is party to all commercial real property leases in Canada.

Business of the Bath Bed & Beyond Group

[14] The Bed Bath & Beyond Group is a retailer that sells a wide assortment of merchandise in the home, baby, beauty and wellness markets. Within Canada, BBB Canada operates 54 Bed Bath & Beyond stores and 11 buybuy Baby stores. As of January 31, 2023, BBB LP employed approximately 387 full-time employees and 1038 part-time employees in connection with its retail operations across Canada.

[15] Ms. Etlin further states that each BBB Canada retail store is located in premises leased by BBB LP. The vast majority of retail leases to which BBB LP is party are indemnified by BBBI.

[16] BBB Canada relies on BBB on for certain administrative and business support services (the "Shared Services") that are integral to BBB Canada's operations. In addition, all procurement of merchandise for BBB Canada is completed by Liberty Procurement Co. Inc., a wholly owned subsidiary of BBBI. Ms. Etlin states that BBB Canada cannot operate or function without the provision of the Shared Services from BBBI.

Financial Position of the Applicant

[17] As at November 26, 2022, the Bed Bath & Beyond banner in Canada had total assets of approximately \$427.4 million, and total liabilities of approximately \$342.8 million. The buybuy Baby banner in Canada has total assets of approximately \$52.7 million in total liabilities of approximately \$86.9 million.

[18] With respect to the secured debt position, Ms. Etlin states that BBBI, certain of its US and Canadian subsidiaries (including BBB LP), JPMorgan Chase Bank, N.A., as administrative agent and collateral agent (in such capacity, the "ABL Agent"), Sixth Street Specialty Lending, Inc. as the "first in, last out" agent ("Sixth Street"), and certain lenders, are parties to an Amended Credit Agreement.

[19] The Amended Credit Agreement provides for aggregate revolving commitments of US \$565 million (the “ABL Facility”) and a “first in, last out” term loan facility of US \$475 million (the “FILO Facility” and together with the ABL Facility, the “Credit Facilities”). Prior to the Second Amendment to the Amended Credit Agreement, (the “Second Amendment”), the aggregate revolving commitments under the ABL Facility were US \$1.13 billion and the FILO Facility was US \$375 million.

[20] In Canada, the Credit Facilities are secured against all present and after-acquired personal property of BBB LP and the Applicant.

[21] On or around January 13, 2023, certain events of default were triggered under the Amended Credit Agreements (collectively, the “Events of Default”) as a result of BBBI’s failure to prepay an over-advance and satisfy a financial covenant, among other things. On January 23, 2023, the ABL Agent informed the Bed Bath & Beyond Group that, as a result of the ongoing events of default, a cash dominion (the “Cash Dominion Period”) had occurred and the ABL Agent had delivered the applicable dominion notices. Ms. Etlin states that such significant restrictions on the Bed Bath & Beyond Groups cash use severely hampered its ability to continue operating in both Canada and the United States. On January 25, 2023, the ABL Agent sent a notice of acceleration and default interest (the “Acceleration Notice”) to the Bed Bath & Beyond Group (including BBB Canada) as a result of the ongoing Events of Default.

[22] The Bed Bath & Beyond Group undertook a further in-depth review of all strategic alternatives. On February 6, 2023, BBBI announced that an equity offering was proceeding in the United States but no acceptable bids were received for any executable transaction involving the Canadian business.

Need for CCAA Relief

[23] Ms. Etlin advises that BBB Canada is in urgent need of protection under the CCAA. BBB Canada is not profitable on a standalone basis. In 2021, both the Applicant and BBB LP reported net losses. For the nine-month period ending November 26, 2022, both the Bed Bath & Beyond and the buybuy Baby banners in Canada reported significant net losses and negative EBITDA. Ms. Etlin further states that BBB Canada does not have the capacity or ability to independently effect a recapitalization or restructuring of the Canadian operations without the support of BBBI. BBB Canada is insolvent from a balance sheet and cash flow perspective.

Discussion

[24] Having reviewed the record and hearing submissions, I am satisfied that the Applicant is insolvent and there are claims against the Applicant in excess of \$5 million. The Applicant is a “debtor company” as defined in the CCAA. In arriving at the conclusion that the Applicant is insolvent, I have taken into account that BBB Canada is not profitable on a standalone basis. For the nine-month period ending November 26, 2022, the Bed Bath & Beyond banner in Canada reported a net loss of \$87.6 million and EBITDA was negative \$81.8 million. For the same period, the buybuy Baby banner in Canada reported a net loss of \$11.9 million and its EBITDA was negative \$10.4 million. In addition, I am satisfied that the Applicant does not have the capacity to

effect a recapitalization or restructuring of its operations without the support of BBBI and finally, the Bed Bath & Beyond Group has determined that it is no longer in a position to provide financial and operational support to BBB Canada.

[25] I am also satisfied that this court has jurisdiction over these proceedings. The chief place of business for the Applicant is Ontario. The Applicant's registered office is in Toronto, Ontario and BBB LP is formed pursuant to the laws of Ontario. The corporate office is located in Mississauga, Ontario and a substantial number of retail stores are located in Ontario.

[26] The Applicant wishes to conduct a controlled and orderly winddown of operations in Canada for the benefit of all stakeholders. The CCAA can be used for the purpose of winding down a business. Examples include *Target Canada Co. (Re)*, 2015 ONSC 303 at para. 31; *Express Fashion Apparel Canada Inc.* and *Express Canada GC GP, Inc. (Re)*, (May 4, 2017) Ontario SCJ (Commercial List), Court File No. CV-17-11785-00CL (Initial Order) at para. 10 and *Forever XXI ULC (Re)*, September 29, 2019, Ontario SCJ, (Commercial List), Court File No. CV-19-00628233-00CL (Endorsement).

[27] With respect to the request for a stay of proceedings and related relief during the Initial Stay Period, section 11.02(1) of the CCAA permits the court to grant an initial stay of up to 10 days, provided such a stay is appropriate and the applicants have acted with due diligence and in good faith. At an initial hearing the relief must be limited to relief that is reasonably necessary for the continued operation of the debtor company in the ordinary course of business during that period.

[28] The CCAA expressly applies to debtor companies, but not partnerships. However, where the operations of partnerships are integral and closely related to the operations of the Applicant, the CCAA Court has jurisdiction to extend the protection of the stay of proceedings to those partnerships in order to ensure that the purposes of the CCAA can be achieved. Such relief has been granted in *Target*, *supra* above at paras. 42 – 43 and in *4519922 Canada Inc. (Re)*, 2015 ONSC 124, para. 37.

[29] In this case, the Applicant seeks to have the stay of proceedings and other provisions of the Initial Order extended to BBB LP, as it is related to the Applicant, carries on operations that are integral to the business of the Applicant, is party to all Canadian retail leases, and is a guarantor under the Credit Facilities.

[30] I am satisfied that it is appropriate to grant the Stay of Proceedings and to extend such stay to cover BBB LP.

[31] The Applicant also requests a stay of certain derivative claims against BBBI. Most of the retail leases to which BBB LP is a party are subject to an indemnity provided by BBBI in favour of the landlord. Although BBBI is not an applicant, the Proposed Initial Order includes the temporary stay of any proceeding against or in respect of BBBI arising out of or in connection with any indemnity, guarantee or surety relating to a lease of real property by BBB LP or the Applicant. The proposed Initial Order also provides that any landlord claim pursuant to a guarantee in relation to either BBB LP or the Applicant shall be unaffected and shall not be released or

affected in any way in any Plan filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* (“BIA”).

[32] The Applicant submits that the CCAA Court has jurisdiction under section 11 to grant a third party stay and references *Target, supra* at para. 50, *McEwan Enterprises Inc.*, 2021 ONSC 6453 at para. 45, *Laurentian University of Sudbury* 2021 ONSC 659 at paras. 30 – 33 and *Lydian International Limited*, 2019 ONSC 7473 at para. 39. The Applicant submits that section 11.04 of the CCAA does not prevent the court from granting such a remedy in its discretion on the basis that the section is inapplicable, as the indemnities at issue here are not guarantees. In its factum, the Applicant also references that the Alberta Court of Queen’s Bench in *Northern Transportation Company Limited (Re)*, 2016 ABQB 522 at para. 69 took a contrary view. The contrary view was also expressed in *Cannapiece Group Inc. v. Carmela Marzili*, 2022 ONSC 6379.

[33] This issue is not free of doubt and affected landlords have not been served and did not appear at this hearing.

[34] There are outstanding issues as between the Applicant and the landlords that have to be addressed in the near future. In an effort to encourage discussions as between the Applicant and the various Landlords, I am prepared to grant this requested stay of proceedings in respect of BBBI for the initial 10 day period prior to the comeback hearing. To be clear, this stay of proceedings will expire on February 21, 2023, unless further extended at the comeback hearing.

[35] I am also satisfied that it is appropriate to permit the Applicant to make prefiling payments, with the consent of the Monitor, to critical suppliers up to a maximum aggregate amount of \$500,000, on terms set out in the Initial Order.

[36] In addition, the Applicant proposes that the Monitor, its counsel, counsel to BBB Canada be granted a Court-ordered charge as security for their respective fees and disbursements relating to services rendered in respect of BBB Canada (the “Administration Charge”). With the concurrence of the proposed Monitor, the Applicant proposes that the Administration Charge for the first 10 days be limited to \$0.55 million and will be seeking to increase the Charge at the comeback hearing. The court has jurisdiction to grant such relief pursuant to section 11.52 of the CCAA and in the circumstances, I am satisfied that it is appropriate to grant the requested relief.

[37] I am also satisfied that it is appropriate to grant a Charge in favour of the Directors and Officers of BBB Canada (the “D&O Charge”), in the requested amount of \$7.5 million for the first 10-day period.

[38] In summary, an Initial Order is granted with Alvarez & Marsal Canada Inc. being appointed as Monitor. The comeback hearing has been scheduled for Tuesday, February 21, 2023, at 9:00 a.m.



Chief Justice G.B. Morawetz

Date: February 13, 2023

THIS IS **EXHIBIT “C”** REFERRED TO IN THE AFFIDAVIT OF HOLLY ETLIN SWORN BEFORE ME over video teleconference this 15th day of February, 2023 pursuant to O. Reg 431/20, Administering Oath or Declaration Remotely. The affiant was located in the City of New York, in the State of New York while the Commissioner was located in the City of Toronto, in the Province of Ontario.



Commissioner for Taking Affidavits
Viktor Nikolov (LSO No. 84503P)

**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

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

Applicant

AFFIDAVIT OF HOLLY ETLIN

I, Holly Etlin, of the City of New York, in the State of New York, MAKE OATH AND
SAY:

1. This Affidavit is made in support of an application by BBB Canada Ltd. (the “**Applicant**”) for an initial order (the “**Initial Order**”) and related relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”). While Bed Bath & Beyond Canada L.P. (“**BBB LP**”, and together with the Applicant, “**BBB Canada**”) is not an applicant in this proceeding, the Applicant seeks to have the stay of proceedings and other benefits of the Initial Order under the CCAA extended to BBB LP as it is related, and carries on operations that are integral, to the business of the Applicant.

2. I am the Interim Chief Financial Officer (“**Interim CFO**”) of BBB Canada’s parent company, Bed Bath & Beyond Inc. (“**BBBI**” and together with its various U.S. subsidiaries and BBB Canada, the “**Bed Bath & Beyond Group**”). I have served in the capacity of Interim CFO of BBBI since February 2, 2023. I am also a Managing Director at AlixPartners, LLP (“**AlixPartners**”). AlixPartners has served as the financial advisor to the Bed Bath & Beyond

Group since 2022. I have worked in various positions at AlixPartners since 2007. I have more than 30 years of experience in providing turnaround services for companies in the retail, distribution, consumer products, financial services, media, and hospitality industries and have frequently been appointed as Interim CEO, Interim CFO, and Chief Restructuring Officer of these businesses. I am admitted to the American College of Bankruptcy and the International Insolvency Institute and am a Certified Turnaround Professional.

3. I am familiar with the Bed Bath & Beyond Group's day-to-day operations, business and financial affairs, and books and records and have personal knowledge of the matters deposed to in this Affidavit. Where I have relied on other sources for information, I have stated the source of my information and I believe such information to be true. In preparing this Affidavit, I consulted with BBB Canada's legal, financial, and other advisors and with other members of BBB Canada's and BBBI's senior management teams.

4. All references to monetary amounts in this Affidavit are in Canadian dollars unless noted otherwise.

A. Overview

5. The North American retail industry has undergone a period of rapid change and shifting consumer demands over the past number of years, including dramatic declines in retail foot traffic, a loss of brand loyalty, and increasing demands for online retail options. A surge of retail bankruptcy filings has resulted in both Canada and the United States.

6. The Bed Bath & Beyond Group has not been immune to the foregoing challenges. By 2018, the Bed Bath & Beyond Group's revenues were rapidly declining and it was reporting significant net losses. Over this period, BBB Canada has also seen dramatic declines in revenues.

7. In an effort to improve the Bed Bath & Beyond Group's financial performance, BBBI's former management embarked on a series of initiatives designed to transform the business, including attempts to improve the omni-channel experience for customers and putting a significant focus on newly developed private label brands. Former management also initiated a comprehensive cost restructuring program. At the same time, the Bed Bath & Beyond Group spent over \$1 billion on a share buyback program.

8. Unfortunately, the COVID-19 pandemic and the broader economic downturn, including global supply chain disruptions and persistent inflation, significantly disrupted the Bed Bath & Beyond Group's operations, putting further financial strain on the entire enterprise, including BBB Canada, and hindering the transformational efforts of management.

9. The Bed Bath & Beyond Group's situation significantly worsened throughout 2022, with declining year-over-year sales in both the United States and Canada, multiple credit rating downgrades, cash flow constraints, and significant inventory reductions. Cash constraints caused delays and stoppages of merchandise shipments to BBB Canada's stores, causing inventory levels to decrease dramatically.

10. In June 2022, certain management of BBBI were replaced, and the new, current management embarked on an aggressive campaign to preserve cash, reduce costs, and strengthen the balance sheet.

11. By August 2022, the Bed Bath & Beyond Group believed it was well-positioned for success. However, less than one week after announcing its strategic and business update, BBBI's Chief Financial Officer passed suddenly and tragically. The CFO's death left the Bed Bath & Beyond Group with a significant leadership gap at a critical juncture in its restructuring efforts.

12. The process of remedying the Bed Bath & Beyond Group's business and financial decline continued to be challenging through the Fall of 2022. The Bed Bath & Beyond Group announced that during the third quarter holiday period, it suffered from a lower in stock position of approximately 70%. For the third quarter ending November 26, 2022, the Bed Bath & Beyond Group reported a net loss of US \$393 million and sales declines of 33% over the previous year. For the same nine-month period, the Bed Bath & Beyond banner in Canada had a net loss of \$87.6 million and its EBITDA was negative \$81.8 million.

13. On December 22, 2022, the ABL Agent (as defined below) under BBBI's then US \$1.13 billion ABL Facility (of which BBB LP is a borrower and the Applicant is a guarantor) delivered a notice to BBBI imposing additional reserves under BBBI's borrowing base.

14. The situation continued to decline in January 2023. On January 5, 2023, in its notice of late filing with respect to its Form 10-Q for the three months ended November 26, 2022, the Bed Bath & Beyond Group disclosed that there was substantial doubt about its ability to continue as a going concern. Shortly thereafter, the ABL Agent declared events of default and delivered notices of acceleration under both the ABL Facility and BBBI's then US \$375 million FILO Facility (of which BBB LP is also a borrower and the Applicant is a guarantor), thereby causing the principal amount of such facilities, together with all accrued interest thereon and other fees and obligations, to become immediately due and payable. The ABL Agent also declared cash dominion, restricting the entire Bed Bath & Beyond Group, including BBB Canada, from spending any cash on hand.

15. During this time, the Bed Bath & Beyond Group continued to pursue actions and take steps to improve its cash position and mitigate liquidity shortfalls, and to consider and pursue all strategic alternatives, including restructuring or refinancing its debt, seeking additional debt or

capital, reducing or delaying the company's business activities and strategic initiatives, selling assets—including a sale of some or all of the Canadian business—and other strategic measures, including the possibility of obtaining relief under the U.S. Bankruptcy Code. Lazard Frères & Co. LLC ("**Lazard**"), an investment bank retained by the Bed Bath & Beyond Group, undertook a marketing process to identify an executable transaction, including a sale of some or all of the Canadian business.

16. As a result of these efforts, earlier this week, BBBI announced a proposed underwritten public offering of shares (the "**Offering**"), together with amendments to its Credit Facilities, which, if all of the conditions are met, will provide BBBI with additional capital to continue its turnaround efforts for Bed Bath & Beyond Group's business in the United States outside of a bankruptcy filing. The Offering is subject to certain conditions which, if not fully satisfied, could result in less than full proceeds received from the Offering. The Bed Bath & Beyond Group expects that a failure to receive the full amount of proceeds from the Offering would likely force a bankruptcy filing by BBBI and its U.S. subsidiaries under the U.S. Bankruptcy Code.

17. Unfortunately, Lazard's efforts to identify a going concern solution for Canada were not successful. Multiple outreaches to third parties have not resulted in an executable transaction.

18. Faced with extremely limited funding and significant constraints upon its use of cash, the Bed Bath & Beyond Group has reluctantly concluded that there is not enough capital available (even with the lifeline provided by the Offering) to restructure both its business in the United States and properly resuscitate the Canadian business to achieve profitability.

19. BBB Canada is not profitable on a standalone basis. As noted above, BBB Canada has realized significant net losses for the nine months ending November 26, 2022. Each of the

Applicant and BBB LP reported net losses on their respective annual tax filings with the Canada Revenue Agency (“CRA”) for 2021.

20. Moreover, BBB Canada contributes negative EBITDA margin to the Bed Bath & Beyond Group’s consolidated business. While consideration was given to closing a smaller subset of poorly performing stores, and continuing operations in Canada with a reduced footprint of stronger performing locations, the Bed Bath & Beyond Group has concluded that the economics of doing so are not justifiable. Without an operation of scale, the costs of accessing inventory, securing necessary transportation arrangements, and maintaining operational infrastructure would significantly impact the profitability (if any) of these remaining Canadian locations.

21. Further, a significant amount of capital is required to replenish the inventory in Canada, satisfy accounts payable, and rebuild vendor relationships. Inventory levels at the Canadian stores are at historic lows, due to the financial challenges faced by the enterprise, tightened or unavailable trade credit, and/or the unwillingness of suppliers to ship merchandise.

22. In addition, BBB Canada is dependent on BBBI to provide critical Shared Services (as defined below), including executive, legal, accounting, finance, treasury, tax, human resources, information technology, and inventory procurement. BBBI is not prepared to continue offering those Shared Services (which have not historically been cash settled) or continuing to allow the use of the “Bed Bath & Beyond” and “buybuy BABY” marks (which are not owned by BBB Canada), in light of its current financial circumstances.

23. Finally, continuation of Canadian operations does not have support from BBB Canada’s lenders under the Approved Budget (defined below), which is one of the conditions to the amendment and deceleration that made the Offering possible. Notwithstanding the recent

amendments to the Amended Credit Agreement, the Bed Bath & Beyond Group, including BBB Canada, remain under cash dominion. The Approved Budget (as defined below) contemplated by the recently announced Amended Credit Agreement (as defined below) (against which variances may constitute an event of default) does not provide for any further funding of the Canadian operations. BBB Canada does not have capacity or ability to independently effect a recapitalization or restructuring of the Canadian operations without access to cash and the support of BBBI and its lenders.

24. Accordingly, after consideration of all strategic alternatives, including an unsuccessful attempt to achieve a going concern solution for the Canadian business, and without any ability to access further funding under the Approved Budget, the Bed Bath & Beyond Group has determined that it is no longer in a position to provide financial and operational support to BBB Canada. BBB Canada is insolvent. Without the support of BBBI, it will be unable to satisfy its obligations as they come due. BBB Canada is required to wind down its business in Canada. It has commenced these proceedings to obtain the flexibility and breathing space afforded by the CCAA to effect an orderly liquidation of its remaining inventory with assistance from a third-party professional liquidator and vacate its leased retail stores and premises.

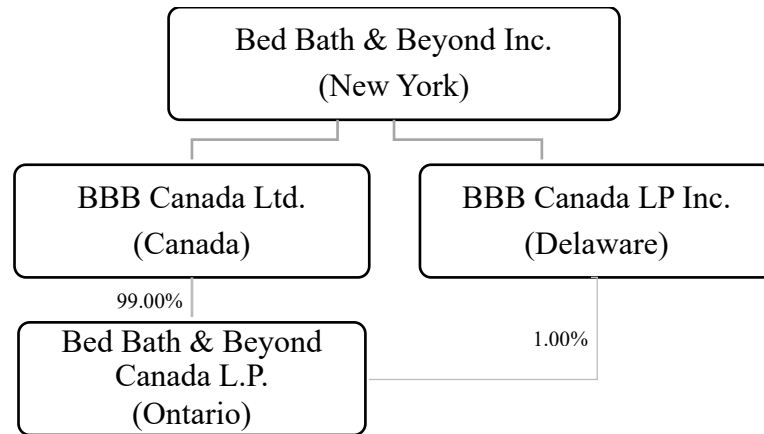
B. Corporate Structure

25. The Applicant is a federal corporation incorporated pursuant to the *Canada Business Corporations Act*, R.S.C. 1985, c C-44 and has a registered office in Toronto, Ontario. The Applicant is a wholly-owned subsidiary of BBBI, a corporation incorporated pursuant to the laws of the State of New York with a head office in Union, New Jersey. BBBI is the ultimate parent corporation of the entire Bed Bath & Beyond Group. BBBI's shares are listed on the NASDAQ exchange.

26. The Applicant has two directors: Mr. Greg Dyer and Ms. Mara Sirhal. Mr. Dyer is the Vice President, GM of Canada and became a director of the Applicant on May 28, 2009. Ms. Sirhal is the Executive Vice President, Brand President (Bed Bath & Beyond) at BBBI and became a director of the Applicant on October 14, 2022. Pursuant to a Unanimous Shareholder's Declaration, dated April 25, 2007, all powers of the directors of the Applicant to manage or supervise the management of the business and affairs of the Applicant including, without limitation, the power to pass resolutions, were terminated and vested wholly in BBBI as 100% shareholder.

27. BBB LP is a limited partnership formed under the laws of the Province of Ontario with its principal place of business in Richmond Hill, Ontario. The Applicant is the general partner and 99% unitholder of BBB LP. While BBB LP is not an applicant in this proceeding, the Applicant seeks to have the stay of proceedings and other provisions of the Initial Order extended to BBB LP in order to maintain stability and business operations through this restructuring process. The business and operations of the Applicant are heavily intertwined with that of BBB LP. In particular, BBB LP is the operating entity in Canada which conducts substantially all of Bed Bath & Beyond's retail operations and is party to all commercial real property leases throughout Canada.

28. A corporate chart detailing the structure of the Bed Bath & Beyond Group as of January 2023 is attached as **Exhibit "A"**. A simplified version of the corporate chart showing the corporate structure relating to the Bed Bath & Beyond Group's Canadian operations is below:



29. The chief place of business of BBB Canada is Ontario. The Applicant's registered office is in Toronto, Ontario, and BBB LP is formed pursuant to the laws of Ontario. The corporate office for BBB Canada's operations is located in Mississauga, Ontario. Twenty-two (22) of Bed Bath & Beyond's fifty-four (54) Canadian retail stores and five (5) of buybuy BABY's eleven (11) Canadian retail stores are located in Ontario. In addition, almost 50% of BBB Canada's employees are located in Ontario.

C. The Business of the Bed Bath & Beyond Group

(a) The Bed Bath & Beyond Group's Retail Business

30. The Bed Bath & Beyond Group is an omni-channel retailer that sells a wide assortment of merchandise in the home, baby, beauty, and wellness markets using multiple end-user customer platforms consisting of websites, applications, and physical retail stores. The Bed Bath & Beyond Group's e-commerce platforms include bedbathandbeyond.com, bedbathandbeyond.ca, harmondiscout.com, facevalues.com and buybuybaby.com. As of the date of this Affidavit, the Bed Bath & Beyond Group's physical retail stores consist of (i) approximately 760 Bed Bath & Beyond stores in the United States and Canada, (ii) approximately 135 buybuy BABY stores in the United States and Canada, and (iii) 50 Harmon stores in the United States. All 50 Harmon

stores have either permanently closed or are in the process of being permanently closed. In addition, a wholly-owned subsidiary of BBBI is a partner in a joint venture which operates retail stores in Mexico under the name Bed Bath & Beyond.

31. Within Canada, BBB Canada operates 54 Bed Bath & Beyond stores and 11 buybuy BABY stores, summarized as follows:

| Province | Open Stores |
|------------------------------|-------------|
| Bed Bath & Beyond | |
| Alberta | 13 |
| British Columbia | 10 |
| Manitoba | 1 |
| New Brunswick | 2 |
| Newfoundland | 1 |
| Nova Scotia | 2 |
| Ontario | 22 |
| Prince Edward Island | 1 |
| Saskatchewan | 2 |
| TOTAL: | 54 |
| buybuy BABY | |
| Alberta | 4 |
| British Columbia | 1 |
| Manitoba | 1 |
| Ontario | 5 |
| TOTAL: | 11 |

32. On average, Canadian sales make up approximately 6.2% of the Bed Bath & Beyond Group's sales.

33. Bed Bath & Beyond stores typically sell or carry the following categories of merchandise:

- (a) *Home décor*: including rugs, candles and fragrances, pillows and blankets, wall art and decor, artificial flowers and plants, lighting, clocks, mirrors, decorative accessories, and holiday décor;

- (b) *Household essentials*: including bedding, bath linens and accessories, small appliances, cookware, bakeware, cutlery and knives, kitchen gadgets, kitchen organization and food storage, dinnerware and flatware, and curtain and window coverings;
- (c) *Furniture*: including nursery furniture, bedroom furniture, accent furniture, living room furniture, office furniture, and kitchen and dining furniture;
- (d) *Outdoor accessories*: including patio furniture, patio accessories, grills and cooking accessories, outdoor décor, and patio umbrellas and screens;
- (e) *Storage and cleaning solutions*: including heating and cooling appliances, cleaning supplies, vacuums, storage solutions, laundry care, and trash and recycling solutions; and
- (f) *Health and beauty*: including hair care, oral care, skin care and personal care products, spa and sleep accessories, fitness and wellness, first aid, and men's grooming.

34. buybuy BABY stores typically sell or carry infant and child related merchandise, including apparel, furniture, storage and organization, strollers, car seats, bedding, highchairs, bath and diapering equipment, nursing and feeding solutions, and health and safety accessories.

35. Many of the brands carried and sold by the Bed Bath & Beyond Group are corporately owned (or "private label" brands), including Mighty Goods™, Ever and Ever™, Simply Essential™, Bee & Willow Home™, Squared Away™, Nestwell™, and H is for Happy™. Thousands of products in key categories such as bed, bath, home organization, food prep, and

indoor décor are marketed and sold by the Bed Bath & Beyond Group under these wholly-owned brands.

(b) Leases and Retail Stores

36. As noted above, BBB Canada operates 54 Bed Bath & Beyond stores and 11 buybuy BABY stores throughout Canada. Each store is located in premises leased by BBB LP. BBB Canada does not own any real property.

37. The vast majority of the retail leases to which BBB LP is party (excluding its warehouse and office leases) are indemnified by BBBI. Attached as **Exhibit “B”** is an example indemnity granted by BBBI with confidential information redacted. Most indemnities granted by BBBI with respect to Canadian retail leases are generally on the same form.

38. Certain of the Bed Bath & Beyond and buybuy BABY store leases in Canada are held or managed by large national retail landlords, while others are held or managed by non-national retail landlords. Certain of these large national retail landlords lease multiple locations to BBB LP. Most of these leases are for an initial term of 10 to 15 years, with an option to renew such lease for additional 5-year terms. The average size of a Bed Bath & Beyond store in Canada is between 20,000 and 30,000 square feet and the average size of a buybuy BABY store in Canada is between 18,000 and 22,000 square feet.

39. Typical of retail leases in Canada, many of the leases contain provisions that impact store operations, including:

- (a) restrictions that relate to going out of business or liquidation sales in one form or another. Some of the leases contain blanket prohibitions, while others permit such

sales if conducted pursuant to a court order. Some leases only prohibit the operation of a store that primarily sells merchandise that is classified as “clearance”, “close out”, “discontinued” or “odd lot”, but do not prohibit one-off going out of business sales. Many of the leases prohibit the posting of “liquidation” or “going out of business” signage;

- (b) requirements to notify the landlords prior to ceasing operations. No retail leases currently require BBB LP to remain open and operating, provided that some require notice be given to the landlord a certain number of days prior to BBB LP ceasing operations. Many of the leases include recapture rights that permit the landlord to terminate the lease if the store ceases operations beyond the permitted number of non-operational days;
- (c) obligations to comply with exclusive use rights the landlord may have granted to other tenants; and
- (d) restrictions on assignment of the lease and change of control transactions. Some of the leases exempt changes of control where the incoming entity purchases substantially all of the Bed Bath & Beyond stores in Canada or a certain province or geographic region and carries on the same business as Bed Bath & Beyond thereafter. Some leases exempt change of control transactions when the incoming entity purchases all of the assets of the tenant.

40. In addition to the above, BBB LP is also party to:

- (a) a lease for an approximately 5,200 square foot warehouse in Surrey, B.C. (the “**BC Warehouse**”). As discussed below, the BC Warehouse was historically used by BBB Canada to temporarily store inventory imported directly into Canada for sale in buybuy BABY stores and, occasionally, Bed Bath & Beyond stores. The BC Warehouse was also used to fulfill online customer orders. Currently, there is very limited, if any, inventory remaining in the BC Warehouse as most of it has been moved to retail store locations; and
- (b) a lease for a Canadian corporate office in Mississauga, Ontario.

41. Under the majority of store leases, BBB Canada’s filing for protection under the CCAA constitutes an “Event of Default” entitling the applicable landlord to exercise certain remedies against BBB LP, including termination of the lease, acceleration of rent and other charges under the lease, and repossession of the premises.

(c) Merchandising, Distribution and Logistics

42. BBB Canada sources merchandise for its Canadian operations from two main sources. First, approximately 68% to 70% of all Bed Bath & Beyond Canadian merchandise and approximately 50% of all buybuy BABY Canadian merchandise is sourced from the same assortment stocked by BBBI at U.S. supplier warehouses or flowed through U.S. import warehouses. This merchandise is comprised both of corporately owned brands, as well as product sourced from various U.S. vendors. The Bed Bath & Beyond Group had, until recently, four pooling facilities along the U.S./Canada border where U.S. based suppliers shipped their product to be re-organized onto pallets for forwarding to individual stores in Canada. Two of the four

pooling facilities were recently closed as part of the Bed Bath & Beyond Group's efforts to restructure and reduce costs.

43. Logistics providers retrieve the product from the pooling facilities and then transport it to individual retail stores throughout Canada. The Bed Bath & Beyond Group currently maintains, among other things, two general customs bonds in Canada with the Canada Border Services Agency (the "**CBSA bonds**"). Aon Reed Stenhouse Inc. provides surety bond brokerage services to the Bed Bath & Beyond Group in connection with their CBSA bonds.

44. Second, approximately 30% to 32% of all merchandise for Bed Bath & Beyond's Canadian operations and approximately 50% of all merchandise for buybuy BABY's Canadian operations is sourced directly from Canadian vendors. This Canadian-sourced product falls into four categories: (i) products for which a distributor in Canada has broad distribution rights; (ii) substantially all electronics sold in BBB Canada's retail operations; (iii) products that must be purchased in Canada as the corresponding product sold in the United States does not meet defined specifications for sale in Canada (which includes products without bilingual packaging, most cleaning chemicals, beauty products, and all food); and (iv) products geared toward the Canadian market but would not be sensible for the U.S. market, including warmth products such as duvets and quilts and all recycling and compost-related goods.

45. All procurement for BBB Canada is completed by Liberty Procurement Co., Inc. ("**Liberty Procurement**"), a wholly-owned subsidiary of BBBI. In Canada, BBB LP is party to a Buying Agency Agreement with Liberty Procurement, dated March 17, 2015, pursuant to which BBB LP has appointed Liberty Procurement as its non-exclusive agent for sourcing all merchandise

purchased in the United States and Canada. The costs of merchandise purchased for BBB Canada's retail operations is generally paid by BBBI and recorded by BBBI as an intercompany receivable.

46. As at January 2023, BBB Canada sourced product from approximately 137 different vendors and suppliers.

47. Unlike many retailers, the Bed Bath & Beyond Group does not have any distribution centers in Canada. All Canadian-sourced merchandise is shipped directly by the vendor to each store, or in some cases directly to the consumer. If a Canadian vendor is shipping less than 14 cartons to a Bed Bath & Beyond or buybuy BABY store in Canada, such cartons are shipped by FedEx ground service. If a Canadian vendor is shipping more than 14 cartons to a Bed Bath & Beyond or buybuy BABY store in Canada, the cartons are sent to Speedy Transport to be consolidated with other packages and then shipped at regular intervals to the applicable store.

48. Within Canada, Bed Bath & Beyond and buybuy BABY have very limited storage space for excess inventory apart from the limited space available in each store and the BC Warehouse. To supplement, Metro Logistics Inc. ("**Metro**") provides warehousing and freight brokerage services to BBB Canada pursuant to a Warehousing and Transportation Management Services Agreement, dated December 13, 2019, between Metro and BBBI (the "**Metro Agreement**"). Custom brokers and other supply chain providers also provide services to BBB Canada.

49. Unlike in the United States where Bed Bath & Beyond and buybuy BABY have separate websites for online ordering by customers, in Canada, the online offerings for both brands are sold through a single website: <https://www.bedbathandbeyond.ca/>. Until December 2022, online orders submitted by customers located in Canada were fulfilled 50% in Canada and 50% in the United States. While Bed Bath & Beyond and buybuy BABY stores were the largest fulfillers of online

orders in Canada, a significant portion of such orders were also fulfilled by corporate fulfillment centers located in the United States and by direct shipment from the applicable vendors to the customer. In December 2022, BBB Canada eliminated all U.S. order fulfillment for Canadian-based customers as such practice was unprofitable, resulting in significantly longer delivery periods as compared to Canadian-fulfilled orders, and diverted potential orders from Canadian-based vendors.

(d) Gift Cards and Customer Programs

50. Bed Bath & Beyond and buybuy BABY customers can purchase gift cards in stores and online. The gift cards are redeemable for in-store and online purchases. As at January 21, 2023, BBB Canada had a net liability for outstanding gift cards of approximately \$10.2 million under the Bed Bath & Beyond banner and \$0.4 million under the buybuy BABY banner.

51. BBB Canada also has a net liability as at January 21, 2023 of approximately \$3,600 relating to bonus gift cards issued under the buybuy BABY banner as part of historical promotions undertaken by the company.

52. In addition to gift cards, as at January 21, 2023, BBB Canada had a net liability for merchandise credits issued to customers in accordance with BBB Canada's Return Policy of approximately \$2.5 million under the Bed Bath & Beyond banner and \$0.8 million under the buybuy BABY banner. It is proposed in the Initial Order that outstanding gift cards and merchandise credits will be honoured during BBB Canada's proposed liquidation process until and including March 12, 2023.

53. The Bed Bath & Beyond Group also offers customers the ability to earn and redeem reward points every time they shop at Bed Bath & Beyond, buybuy BABY or Harmon (in the United States only) online or in store. As at January 21, 2023, BBB Canada had a net liability for outstanding points held, but not yet redeemed, of approximately \$0.8 million.

(e) Customer Payments and Deferred Payments

54. Customers of BBB Canada purchase products using a number of different payment methods, including cash, credit cards, debit cards, gift cards, and merchandise credit.

55. All customer credit card payments in respect of the Canadian business (including for retail store and e-commerce sales) are processed by third-party payment processing service providers, including *Amex Bank of Canada* and *First Data Canada*. BBB Canada incurs processor fees in connection with its service agreements with credit card processors that relate to the processing of BBB Canada's credit card and gift card transactions. The proposed Initial Order authorizes BBB Canada, with the consent of the Monitor, to make payments to providers of payment processing services (including credit card processing services) supplied to BBB Canada prior to the date of the Initial Order.

56. In addition to the traditional forms of payment accepted at Canadian retail operations, BBB Canada has partnered with *Afterpay* and *Welcome Pay powered by Zip* to allow customers who make purchases at both the Bed Bath & Beyond and buybuy BABY banners to defer immediate payment for such purchases. *Afterpay* allows qualifying customers to pay for their purchases in four installments made every two weeks without interest. *Welcome Pay powered by Zip* allows qualifying customers to pay for their purchases over time at certain installments established at the time of purchase.

57. Both *Afterpay* and *Welcome Pay powered by Zip* pay BBB Canada upfront for all goods purchased by qualifying customers using their services, and then recover such funds directly from the customers in accordance with applicable terms.

(f) Intellectual Property

58. The Bed Bath & Beyond Group use the service marks “Bed Bath & Beyond”, “buybuy BABY”, “Harmon”, and “Face Values” in connection with their retail services. Only the “Bed Bath & Beyond” and “buybuy BABY” marks are used in Canada.

59. All of the intellectual property rights held by the Bed Bath & Beyond Group are owned by Liberty Procurement and BBBI with respect to “Bed Bath & Beyond” related intellectual property, and by Buy Buy Baby Inc. (“**BBBaby Inc.**”) with respect to “buybuy BABY” related intellectual property. No intellectual property is owned directly by BBB Canada.

60. With respect to the “Bed Bath & Beyond” related intellectual property, BBB LP is party to a License Agreement with Liberty Procurement, dated November 14, 2007, pursuant to which Liberty Procurement has granted a non-exclusive right to BBB LP to use all trademarks, tradenames, service marks, logos, copyrights, and other intellectual property related to “Bed Bath & Beyond”, and all goodwill associated therewith, in its partnership name and its business in Canada.

61. With respect to the “buybuy BABY” related intellectual property, BBB LP is party to a License Agreement with BBBaby Inc., dated November 30, 2014, pursuant to which BBBaby Inc. has granted a non-exclusive right to BBB LP to use all trademarks, tradenames, service marks,

logos, copyrights, and other intellectual property related to “buybuy BABY”, and all goodwill associated therewith, in its partnership name and its business in Canada.

(g) Employees and Employee Benefits

62. As of January 31, 2023, BBB LP employed approximately 387 full-time employees (also referred to as associates) and 1,038 part-time associates in connection with its retail operations across Canada. The majority of BBB LP’s associates are employed at its retail stores in customer-facing functions and are paid hourly rates. Certain associates, such as corporate personnel and store managers, are salaried employees and are eligible to participate in certain bonus programs according to their respective roles. BBB LP does not have any unionized employees and there are no pensions for their benefit. BBB LP has not retained any independent contractors or consultants in Canada. Further detail regarding BBB LP’s employees, including their location and designation as of January 31, 2023, is set out in the table below:

| Province / Territory | Full Time Employees | Part Time Employees | Total Employees |
|-----------------------------|----------------------------|----------------------------|------------------------|
| Alberta | 101 | 303 | 404 |
| British Columbia | 65 | 172 | 237 |
| Manitoba | 11 | 23 | 34 |
| New Brunswick | 7 | 24 | 31 |
| Newfoundland | 5 | 12 | 17 |
| Nova Scotia | 10 | 25 | 35 |
| Ontario | 172 | 430 | 602 |
| Prince Edward Island | 5 | 15 | 20 |
| Saskatchewan | 11 | 34 | 45 |
| TOTAL | 387 | 1,038 | 1,425 |

63. On the corporate side, BBB LP employs eight Canadian-based employees to manage the Bed Bath & Beyond Group’s Canadian operations. Such employees include (i) Vice President,

GM of Canada, (ii) four district managers located throughout the country, (iii) a director of merchandise, (iv) a vice president of stores, and (v) a director of category management.

64. BBB LP uses a payroll services provider to manage payroll functions on behalf of BBB Canada, including payroll processing and the collection and remittance of certain related source deductions. Associates are paid bi-weekly, five days in arrears. BBB LP is current with respect to the remittance of employee source deductions. BBB LP's average gross biweekly payroll between October 23, 2022 and January 28, 2023 was \$1.5 million. The proposed Initial Order authorizes BBB Canada, with the consent of the Monitor, to pay payroll services providers for services supplied to BBB Canada prior to the date of the Initial Order.

65. BBB LP sponsors a registered retirement savings plan ("**RRSP**") and a deferred profit-sharing plan ("**DPSP**") and together with the RRSP, the "**BBB Canada Retirement Plans**") and a full suite of group health and welfare benefits for certain eligible associates (collectively, the "**BBB Canada Group Benefits**").

66. BBB LP associates who have completed one (1) year of employment with BBB Canada and have worked at least 1000 hours of service in a year are eligible to participate in the BBB Canada Retirement Plans. BBB LP associates contribute to the RRSP up to the lesser of 18% of earnings and the maximum permitted under the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) and BBB LP contributes to the DPSP \$0.50 for each \$1.00 that the employee contributes to the RRSP, to a maximum of the lesser of 6% of the associate's earnings and a maximum dollar amount determined by BBB LP each year.

67. BBB LP's contributions to the DPSP are made out of BBB LP's profits and are subject to change at BBB LP's discretion. Contributions to the DPSP are remitted on an annual basis, typically in the first quarter of the year.

68. BBB LP provides BBB Canada Group Benefits to its full-time associates, and in Saskatchewan, to its full and part-time associates. Full-time associates generally receive the following insured benefits: (i) extended health; (ii) dental; (iii) short-term disability ("STD"); and (iv) basic and optional life insurance. Certain managers also receive long term disability ("LTD") insurance. Basic and optional life insurance are employee paid, STD and LTD are employer paid, and extended health and dental is cost-shared between BBB LP and covered associates.

69. Part-time associates in Saskatchewan who work more than 15 hours in a 26-week period receive the following insured benefits: (i) extended health; (ii) dental; and (iii) basic and optional life insurance. Life and optional life are employee paid, and extended health and dental is cost-shared between BBB LP and covered associates.

70. The BBB Canada Retirement Plans are administered through agreements with Manulife Financial, and the BBB Canada Group Benefits are administered through contracts of insurance with GreenShield Canada (extended health and dental) and Industrial Alliance (STD, LTD, and life).

71. BBB LP also provides full-time associates with maternity leave and parental leave "top-up" benefits that, together with amounts available under Employment Insurance, pays eligible associates 100% of their average pay for 6 and 8 weeks respectively. These programs are funded and administered by BBB LP.

72. BBB LP also offers all associates certain fringe benefits such as an employee assistance plan, an employee relief fund, and a discount program.

73. Certain employees of BBB LP are eligible to participate in BBBI's stock equivalent unit plan pursuant to which participants are awarded equity that vests annually. The vested equity is provided to employees either as cash or stock, depending on the type of equity.

74. At this time, it is expected that a significant portion of BBB LP's associates in Canada will be provided with working notice of termination on, or shortly after, the commencement of these CCAA proceedings. BBB LP anticipates that it will continue to employ many of its associates through the liquidation process.

(h) Support Services provided by BBBI

75. BBB Canada relies on BBBI for certain administrative and business support services that are integral to BBB Canada's operations. These services include executive, legal, accounting, finance, treasury, tax, insurance/risk management, real estate, human resources, and information technology support services, among other things (collectively, the "**Shared Services**").

76. BBBI provides these Shared Services from its head office in Union, New Jersey. BBB Canada cannot operate or function without the provision of the Shared Services from BBBI as it does not have any head office management employees in Canada who complete these services for BBB Canada. If the Shared Services were not provided, BBB Canada would be required to immediately cease operations and shut down in an uncontrolled manner.

77. As consideration for the provision of the Shared Services, BBB Canada is allocated a monthly fee calculated as a percentage of sales on its monthly profit and loss statement as part of

its selling, general, and administrative expenses. As discussed further below, such intercompany allocations are booked, but not settled, by BBBI and so continue to accumulate on a monthly basis.

(i) Banking and Cash Management

78. BBB Canada is part of an enterprise-wide centralized cash management system administered by BBBI from its head office to collect, transfer, and disburse funds generated by the operations of the entire Bed Bath & Beyond Group, including BBB Canada (the “**Cash Management System**”). The main components of the Cash Management System include, among others, collections from brick-and-mortar store locations and credit card sales, transfers between Bed Bath & Beyond Group entities, and disbursements to fund daily operations of the business. As of the date of this Affidavit, the Cash Management System is comprised of 76 bank accounts that are owned by the Bed Bath & Beyond Group and are maintained at various branches of 12 banks. Of the 76 total bank accounts, 20 are maintained by BBB Canada for purposes of funding the Canadian businesses.

79. BBB Canada is dependent upon BBBI for all treasury, banking, and related services that are provided by BBBI. BBBI’s treasury department maintains daily oversight over the Cash Management System and implements cash management controls for entering, processing, and releasing funds, including in connection with intercompany transactions. Additionally, BBBI’s corporate accounting department and treasury department regularly reconcile the Bed Bath & Beyond Group’s books and records to ensure transfers are accounted for properly.

80. With respect to the Canadian operations:

- (a) BBB LP maintains four store depository accounts with Scotiabank (the “**Canadian Depository Accounts**”) into which all non-credit card, store level cash sales are deposited by the store manager on a daily basis. Under ordinary circumstances, each week, armored cars collect and transfer cash from each store location to a depository account where the cash is counted and electronically deposited into the applicable store depository accounts. Of the four Canadian Depository Accounts, two are in CAD and two are in USD. All are located in Canada; and
- (b) BBB LP maintains two collection accounts with JP Morgan (the “**Canadian Collection Accounts**”) into which income proceeds from stores, credit card funds, and e-commerce and website receipts are deposited. Both Canadian Collection Accounts are in CAD and are located in Canada.

81. On a daily basis, cash deposited in the Canadian Depository Accounts is either moved to the Canadian Collection Accounts or swept to the Concentration Accounts (discussed further below), as applicable. Funds from the Canadian Collection Accounts are also swept daily to the applicable Concentration Accounts.

82. BBB LP maintains five concentration accounts and the Applicant maintains two concentration accounts, all with JP Morgan (collectively, the “**Concentration Accounts**”). Three of the Concentration Accounts are in CAD. The remaining four Concentration Accounts are in USD. All Concentration Accounts are located in Canada. The Concentration Accounts pool incoming funds, on a daily basis, from the Canadian Collection Accounts and Canadian Depository Accounts.

83. The Concentration Accounts fund seven disbursement accounts maintained by BBB LP in Canada with JP Morgan (the “**Disbursement Accounts**”). The Disbursement Accounts are used to fund BBB Canada’s daily operations, such as accounts payable (including payments made to vendors and freight providers), payroll (including benefits), sales tax and other tax obligations, employee obligations, and rent.

84. As discussed above, the handling and processing of all disbursements from the Disbursement Accounts for payroll, accounts payable, and other obligations is completed by BBBI on behalf of BBB Canada. BBB Canada does not independently direct any of the Canadian Collection Accounts, Concentration Accounts, or Disbursement Accounts.

85. BBB Canada provides credit cards to certain of its corporate employees and retail associates. The credit cards are used by BBB Canada’s corporate employees for a variety of expenses, including business travel and business expenses, and by certain of its retail associates as an alternative to petty cash.

86. The Applicant anticipates that during the proposed liquidation process, disbursements from the Disbursement Accounts will be funded, as they have previously been in the ordinary course of business, from funds in the Concentration Accounts generated from BBB Canada’s retail operations. Because of the nature of BBB Canada’s business and the disruption that would result if BBB Canada was forced to close its existing bank accounts, the continued existence of the Cash Management System is critical to the orderly wind down of BBB Canada. In connection with these CCAA proceedings, the Applicant is seeking the authority to continue the Cash Management System to maintain the funding and banking arrangements already in place for BBB Canada. The Cash Management System includes the necessary accounting controls to enable the Bed Bath &

Beyond Group to trace funds and ensure that all transactions are adequately documented and readily ascertainable.

D. The Financial Position of the Applicant

87. As a publicly traded company, BBBI files consolidated financial statements with the U.S. Securities and Exchange Commission (the “SEC”). These financial statements include the consolidated results of both the U.S. and Canadian operations. A copy of the Bed Bath & Beyond Group’s audited financial statements for the fiscal year ended January 28, 2022, is attached hereto as **Exhibit “C”**. A copy of the Bed Bath & Beyond Group’s unaudited financial statements for the nine months ended November 26, 2022, is attached hereto as **Exhibit “D”**. These financial statements are the Bed Bath & Beyond Group’s most recent annual and quarterly financial statements.

88. BBB Canada prepares, but does not separately audit or release, stand-alone balance sheets and profit & loss (“P&L”) statements for the Canadian operations. Even though the Bed Bath & Beyond banner and the buybuy BABY banner are both operated in Canada by BBB Canada, BBBI tracks the operations of each banner in Canada separately. Accordingly, in Canada, the Bed Bath & Beyond banner, including all in-store and online sales, are tracked in one balance sheet and P&L statement, while the buybuy BABY banner, including all in-store and online sales, are tracked on another. Attached as **Exhibit “E”** is the most recent balance sheet and P&L statement for Bed Bath & Beyond’s Canadian operations. Attached as **Exhibit “F”** is the most recent balance sheet and P&L statement for buybuy BABY’s Canadian operations. Both balance sheets and P&L statements are for the quarter ended November 26, 2022, and neither have been audited.

89. Importantly, the balance sheets and P&L statements do not incorporate all allocations made and costs incurred by the consolidated Bed Bath and Beyond Group enterprise. The balance sheets and P&L statements are not trued up at any time with the Applicant's or BBB LP's annual tax filings with the CRA. The net losses reported by the Applicant and BBB LP on their respective 2021 tax filings are discussed further below.

(a) Assets

90. As at November 26, 2022, the Bed Bath and Beyond banner in Canada had total assets of approximately \$427.4 million, broken down as follows:

| | |
|--|-----------------|
| Current Assets: \$312.2 million | |
| Cash & Cash Equivalents | \$33.2 million |
| Inventory | \$82.9 million |
| Accounts Receivable | \$1.5 million |
| Due from Affiliates | \$174.9 million |
| Prepaid Expenses | \$12.3 million |
| Restricted Cash | \$4.7 million |
| Other Current Assets | \$2.7 million |
| Non-Current Assets: \$115.2 million | |
| Property and Equipment | \$23 million |
| Fixed Asset Clearing | \$1 million |
| Operating Lease Assets | \$71.6 million |
| Non-Current Deferred Income Taxes | \$19.5 million |
| Security Deposits | \$177,000 |
| Other Non-Current Assets | \$57,000 |

91. As at November 26, 2022, the buybuy BABY banner in Canada had total assets of approximately \$52.7 million, broken down as follows:

| | |
|---------------------------------------|-----------------|
| Current Assets: \$39.9 million | |
| Cash & Cash Equivalents | (\$1.2 million) |
| Inventory | \$11.2 million |
| Accounts Receivable | (\$22,000) |
| Due from Affiliates | \$30.3 million |

| | |
|---|---------------|
| Prepaid Expenses | (\$442,000) |
| Other Current Assets | \$93,000 |
| Non-Current Assets: \$12.8 million | |
| Property and Equipment | \$7.2 million |
| Fixed Asset Clearing | \$124,000 |
| Operating Lease Assets | \$5.5 million |
| Security Deposits | \$23,000 |

(b) Liabilities

92. As at November 26, 2022, the Bed Bath and Beyond banner in Canada had total liabilities of approximately \$342.8 million,¹ broken down as follows:

| | |
|--|-----------------|
| Current Liabilities: \$267.3 million | |
| Accounts Payable | \$216.6 million |
| Accrued Expenses and Other Current Liabilities | \$16.3 million |
| Merchandise Credit and Gift Card Liabilities | \$12.5 million |
| Income Tax Payable | \$47,000 |
| Current Operating Lease Liabilities | \$21.9 million |
| Non-Current Liabilities: \$75.5 million | |
| Operating Lease Liabilities | \$75.5 million |

93. As at November 26, 2022, the buybuy BABY banner in Canada had total liabilities of approximately \$86.9 million,² broken down as follows:

| | |
|--|----------------|
| Current Liabilities: \$67.6 million | |
| Accounts Payable | \$51.4 million |
| Accrued Expenses and Other Current Liabilities | \$11.7 million |
| Merchandise Credit and Gift Card Liabilities | \$1.2 million |
| Income Tax Payable | \$1,000 |
| Current Operating Lease Liabilities | \$3.3 million |
| Non-Current Liabilities: \$19.4 million | |
| Operating Lease Liabilities | \$19.4 million |

¹ The enumerated liabilities do not include the Credit Facilities in respect of which BBB LP is a borrower and the Applicant is a guarantor.

² The enumerated liabilities do not include the Credit Facilities in respect of which BBB LP is a borrower and the Applicant is a guarantor.

(c) Shareholder Equity

94. As at November 26, 2022, the shareholder's equity in respect of the Bed Bath & Beyond banner in Canada was valued at \$84.6 million.

95. As at November 26, 2022, the shareholder's equity in respect of the buybuy BABY banner in Canada was valued at (\$34.3 million).

(d) Earnings

96. For the nine-month period ending November 26, 2022, the Bed Bath & Beyond banner in Canada reported a net loss of \$87.6 million and its EBITDA was negative \$81.8 million. For the same period, the buybuy BABY banner in Canada reported a net loss of \$11.9 million and its EBITDA was negative \$10.4 million.

(e) Secured Debt of BBB Canada

97. BBBI, certain of its U.S. and Canadian subsidiaries (including BBB LP), JPMorgan Chase Bank, N.A., as administrative agent and collateral agent (in such capacity, the "**ABL Agent**"), Sixth Street Specialty Lending, Inc. as the "first-in, last-out" agent ("**Sixth Street**"), and certain lenders (collectively, the "**Lenders**"), are parties to an Amended and Restated Credit Agreement, dated as of August 9, 2021, as amended by the First Amendment to the Amended and Restated Credit Agreement, dated as of August 31, 2022, and the Second Amendment to the Amended and Restated Credit Agreement, dated as of February 7, 2023 (the "**Second Amendment**"), and as may otherwise be amended, restated, supplemented, or otherwise modified from time to time (the

“**Amended Credit Agreement**”). A copy of the Amended Credit Agreement is attached hereto as **Exhibit “G”**.

98. As a result of recent amendments entered into in connection with the Offering (described below), the Amended Credit Agreement provides for aggregate revolving commitments of US \$565 million (the “**ABL Facility**”) and a “first-in, last-out” term loan facility of US \$475 million (the “**FILO Facility**” and together with the ABL Facility, the “**Credit Facilities**”). Prior to the Second Amendment being executed on February 7, 2023, the aggregate revolving commitments under the ABL Facility were US \$1.13 billion and the FILO Facility was US \$375 million. With respect to BBB LP in particular, borrowing availability under the ABL Facility is determined based on certain eligible assets and subject to a US \$75 million sublimit (previously US \$150 million prior to the Second Amendment).

99. The ABL Facility matures on August 9, 2026 (or on May 1, 2024 if the 2024 Notes (as defined below) are outstanding on such date), or unless otherwise required to mature earlier pursuant to the terms of the Amended Credit Agreement. The FILO Facility matures on August 31, 2027 (or May 1, 2024 if the 2024 Notes are outstanding as of such date), or unless otherwise required to mature earlier pursuant to the terms of the Amended Credit Agreement.

100. In Canada, the Credit Facilities are secured against all present and after-acquired personal property of BBB LP and the Applicant pursuant to the terms of an Amended and Restated Canadian Security Agreement, dated as of August 31, 2022 between the ABL Agent, BBB LP and the Applicant (the “**Canadian Security Agreement**”), and a Canadian Guarantee, dated as of June 19, 2020 (the “**Guarantee**”). Copies of the Canadian Security Agreement and the Guarantee are attached hereto as **Exhibits “H”** and “**I**”, respectively. In the United States, the Credit Facilities

are secured on a first priority basis (subject to customary exceptions) on substantially all assets (other than certain real property or equipment located in the United States that is owned by, or leased to, BBBI or any of its subsidiaries exceeding a certain threshold, referred to herein as the **“Excluded Property”**) of BBBI and its subsidiaries that are borrowers or guarantors under the Credit Facilities. Attached as **Exhibits “J”** and **“K”** are copies of personal property security searches of the Applicant and BBB LP, respectively, dated between February 1 and 3, 2023 from British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador.

101. Pursuant to the Amended Credit Agreement:

- (a) the ABL Agent is granted a senior security interest, and Sixth Street is granted a junior security interest, on the “ABL Assets” which includes, but is not limited to, all Accounts and Credit Card Receivables, Inventory, cash and cash equivalents, Deposit Accounts, Securities Accounts, Intellectual Property and Chattel Paper (all as defined in the Amended Credit Agreement);
- (b) the ABL Agent is granted a junior security interest, and Sixth Street is granted a senior security interest on the “Specified Collateral” which includes all collateral other than “ABL Assets”, provided that Excluded Property shall not be included, subject to the terms of the Amended Credit Agreement; and
- (c) the ABL Agent and Sixth Street agreed to certain arrangements as between themselves both before and after institution of any insolvency proceeding by any borrower or loan party under the Amended Credit Agreement relating to bankruptcy

financing, relief from the stay, plans of reorganization, credit bids, releases, and restrictions on the exercise of rights or remedies, among other matters.

102. As discussed further below, concurrently with the closing of the Offering, the ABL Agent and Sixth Street agreed to enter into the Second Amendment to, among other things: (i) waive any outstanding defaults or events of default under the existing Credit Facilities; (ii) rescind the acceleration notices issued under the existing Credit Facilities; and (iii) decrease the ABL Facility from US \$1.13 billion to US \$565 million and increase the FILO Facility by US \$100 million.

103. Notwithstanding the Second Amendment, the Bed Bath & Beyond Group, including BBB Canada, will remain under cash dominion until all obligations under the Credit Facilities are repaid and the commitments thereunder are terminated. During the Cash Dominion Period (as defined below), the ABL Agent must apply all funds credited to any collection accounts (including Canadian Collection Accounts) to prepay any revolving protective advances or revolving loans under the ABL Facility and to cash collateralize letter of credit exposure. The Second Amendment requires that all proceeds from the Offering, along with the US \$100 million to be drawn under the upsized FILO Facility, be used to repay outstanding revolving loans under the ABL Facility.

(f) Unsecured Debt of BBB Canada

104. As noted above, as at November 26, 2022, BBB Canada had liabilities for accounts payable of \$216.6 million relating to the Bed Bath & Beyond banner and \$51.4 million relating to the buybuy BABY banner. Of these amounts, \$189.2 million and \$37.2 million under the Bed Bath & Beyond and buybuy BABY banners, respectively, were amounts due to affiliates.

105. As discussed above, one of the Shared Services administered by BBBI on behalf of BBB Canada is accounts payable. BBBI remits payment to all suppliers, vendors, and other accounts payable due and owing by BBB Canada, and then records such payment as an affiliate obligation on the balance sheet. Also included as an “affiliate obligation” are the monthly fees allocated to BBB Canada with respect to the Shared Services. Such intercompany obligations are booked, but not regularly settled, by BBBI and so continue to accumulate on a monthly basis. For certainty, such amounts are not reflective of sums due and owing to third party vendors and suppliers.

(g) Senior Notes of BBBI

106. BBBI is also the issuer of the following three tranches of senior unsecured notes (collectively, the “**Senior Notes**”):

- (a) 3.479% senior notes due 2024. BBBI issued US \$300 million of 3.479% senior unsecured notes due August 1, 2024 (approximately US \$215.4 million of which remains outstanding at the date of this Affidavit).
- (b) 4.915% senior notes due 2034. BBBI issued US \$300 million of 4.915% senior unsecured notes due August 1, 2034 (approximately US \$209.7 million of which remains outstanding as of the date of this Affidavit).
- (c) 5.165% senior notes due 2044. BBBI issued US \$900 million of 5.165% of senior unsecured notes due August 1, 2044 (approximately US \$604.8 million of which remains outstanding as of the date of this Affidavit).

107. Neither the Applicant, nor BBB LP, are obligors or guarantors under the Senior Notes.

E. Events Leading to the CCAA Filing

(a) Bed Bath & Beyond's Efforts to Restructure the Business

108. BBB Canada operates in the highly competitive North American homeware and infant/early childhood retail industries. BBB Canada's significant competitors include *Walmart*, *IKEA*, *The Hudson Bay Company*, *Costco*, *Winners/Marshalls*, and *Loblaws/Superstore*. BBB Canada has also increasingly faced competition from online retailers like *Wayfair* and *Amazon* which are based entirely online and do not offer physical retail locations to their customer base.

109. The North American retail industry has experienced a period of rapid change and shifting consumer demands over the past number of years. Even prior to the COVID-19 pandemic, retailers like the Bed Bath & Beyond Group faced dramatic declines in retail foot traffic in both mall stores and standalone stores as consumers shifted their spending to online platforms like *Amazon* and *Wayfair*. The shift to online commerce brought with it a host of shifting consumer trends, including: (i) a loss of brand loyalty as consumers easily switch from one brand or e-commerce platform to another; (ii) the blurring of industry boundaries as nonretailers gain access directly to consumers through online platforms rather than selling their product through one or more retail chains; and (iii) a rapid increase in the demand for convenience, including expedited delivery of online orders, evergreen availability of inventory, and easy options for the expedient return of online purchases. The rapid changes resulted in a surge of retail bankruptcy filings, including *Sears*, *JCPenney*, *Toys "R" Us*, *Neiman Marcus*, *Forever 21*, *Target Canada*, and others.

110. The Bed Bath & Beyond Group was not immune to the foregoing challenges. By 2018, its revenues were declining and it was reporting significant net losses. Recognizing the need to quickly adapt to the dynamic retail environment and evolving needs of its customers, the Bed Bath

& Beyond Group's former management developed a comprehensive plan to transform its business and position itself for long-term success. As part of that comprehensive plan, the Bed Bath & Beyond Group, among other things:

- (a) restructured its leadership team, which included the appointment of a new Chief Executive Officer and six other senior members in merchandising, digital, marketing, owned brands and legal;
- (b) completed a sale-leaseback transaction with respect to 2.1 million square feet of owned real estate, which generated over US \$250 million in net proceeds;
- (c) divested non-core assets and reinvested the proceeds in core business operations in order to drive growth and fund share repurchases, among other things;
- (d) closed 249 Bed Bath & Beyond stores across Canada and the United States between 2019 and 2021;
- (e) implemented a workforce reduction of approximately 2,800 roles from across its corporate headquarters and retail stores, designed to further reduce layers at the corporate level, significantly reposition field operations to better serve customers, and realign technology, supply chain, and merchandising teams to support its strategic growth initiatives; and
- (f) introduced and launched a number of corporately-owned brands and thousands of new products in key destination categories of bed, bath, kitchen food prep, home organization and indoor décor.

111. At the same time, the Bed Bath & Beyond Group authorized a US \$1 billion three-year share-repurchase plan.

112. Unfortunately, the Bed Bath & Beyond Group's efforts to restructure its operations and reposition itself for long-term success was interrupted in its early stages by the global COVID-19 pandemic in March 2020. All retail stores across Canada and the United States were closed in accordance with applicable government directives (other than certain stand-alone buybuy BABY stores that were categorized as essential). While leadership of the Bed Bath & Beyond Group reacted quickly to implement cost reductions, net sales in 2020 continued to decline.

113. The impact of the COVID-19 pandemic extended beyond the immediate impact of store closures and has resulted in global supply chain disruptions and persistent inflation experienced throughout Canada and the United States (and around the world) since approximately 2021. The persistent inflation pressures, in turn, led to higher inventory costs and reductions in consumer discretionary spending. By the end of 2021, the Bed Bath & Beyond Group reported net losses of US \$559.6 million, an increase of approximately 14.8% compared to fiscal year 2020. Each of the Applicant and BBB LP reported net losses on their respective annual tax filings with the CRA for 2021.

114. On June 29, 2022, the Bed Bath & Beyond Group announced significant changes to its senior leadership team. Mr. Triton left his role as President and Chief Executive Officer and was replaced by Ms. Sue Gove as interim Chief Executive Officer. At the time that Ms. Gove assumed the role of interim Chief Executive Officer, the Bed Bath & Beyond Group was facing not only steadily declining sales and lower than expected gross margin, but also seriously constrained cash flows resulting from the extended effects of such issues. As at May 28, 2022, the Bed Bath &

Beyond Group had US \$108 million in cash reserves, down from more than US \$1 billion the previous year.

115. Given the Bed Bath & Beyond Group's liquidity constraints, a significant number of key suppliers, including suppliers to BBB Canada, either tightened or revoked the ability of the Bed Bath & Beyond Group to access inventory on credit, thereby exacerbating the already significant cash flow constraints and inventory shortages. For the quarter ended August 27, 2022, the Bed Bath & Beyond Group reported sales of US \$1.437 billion, a 28% decrease from second quarter 2021.

116. In addition to the above, BBBI, for a brief period, was a part of the "meme-stock" movement started and fueled on Reddit boards and social media websites. In March 2022, Mr. Ryan Cohen, the manager of RC Ventures, revealed that RC Ventures had acquired approximately 9.8% of BBBI's outstanding shares. However, on August 18, 2022, just five months later, RC Ventures disclosed that it had sold its entire stake in the company, sparking a selloff of BBBI stock. Overnight, BBBI shares fell roughly 40% and S&P Global Ratings lowered the Bed Bath & Beyond Group's rating to 'CCC' based on worsening macroeconomic conditions and tightening liquidity. By August 22, 2022, market reaction to RC Venture's sellout erased 60% of BBBI's market capitalization.

117. On August 31, 2022, the Bed Bath & Beyond Group, under the leadership of Ms. Gove, announced that it had taken steps to address its liquidity constraints and improve its balance sheet and cash flows by, among other things: (i) securing commitments for more than US \$500 million of new financing, including its newly expanded US \$1.13 billion ABL Facility and its new US \$375 million FILO; and (ii) filing a Form S-3 Registration Statement with the SEC to prepare for

the potential launch of an at-the-market offering program for up to 12 million shares of BBBI common stock (the “**First ATM Offering**”).

118. In addition, the Bed Bath and Beyond Group also announced, among other things, that it had:

- (a) changed its merchandising and inventory strategy to move away from the prior focus on internally-owned brands and products by discontinuing three of its nine private labels and reducing all other corporately-owned brands by 20 percentage points, instead focusing on offering a full suite of national brands demanded by customers;
- (b) begun implementing significant additional selling, general and administrative (“**SG&A**”) expense reductions to right-size its cost structure and reduce SG&A by approximately US \$250 million in fiscal 2022;
- (c) reduced its plan for capital spending from the US \$400 million previously disclosed to US \$250 million and focused strategic investments on technology, digital capabilities and offerings, and store maintenance;
- (d) completed further changes to its leadership team; and
- (e) commenced the closure of approximately 150 lower-producing Bed Bath & Beyond banner stores.

Attached as **Exhibit “L”** is BBBI’s press release, dated August 31, 2022 announcing the foregoing.

119. The process of remedying the Bed Bath & Beyond Group's business and financial decline continued to be complex and challenging throughout the Fall of 2022. While the Bed Bath & Beyond Group successfully reduced its accounts payable, raised gross proceeds of approximately US \$75 million in the First ATM Offering, and cleared out a significant portion of its excess private-label goods, inventory issues continued to plague the Bed Bath & Beyond Group (including BBB Canada) through the 2022 holiday season. The Bed Bath & Beyond Group announced that during the third quarter holiday period, it suffered from a lower in stock position of approximately 70%. For the business critical third quarter ending November 26, 2022, the Bed Bath & Beyond Group reported a net loss of US \$393 million and sales declines of 33% over the previous year. For the same nine-month period, the Bed Bath & Beyond banner in Canada had a net loss of \$87.6 million and its EBITDA was negative \$81.8 million.

120. Throughout 2022, the Bed Bath & Beyond Group saw multiple downgrades to its credit rating as a result of liquidity constraints and fears of its inability to meet impending debt.

121. In addition, an offer to exchange any and all of the outstanding Senior Notes announced by the Bed Bath & Beyond Group in October 2022 in an effort to further strengthen BBBI's balance sheet was declared unsuccessful and terminated as a result of insufficient participation.

(b) The Bed Bath & Beyond Group defaults under the Credit Facilities

122. On December 22, 2022, the ABL Agent delivered a notice to BBBI imposing additional reserves under BBBI's borrowing base as a result of the Bed Bath & Beyond Group's constrained inventory levels.

123. On or around January 13, 2023, certain events of default were triggered under the Amended Credit Agreements (collectively, the “**Events of Default**”) as a result of BBBI’s failure to prepay an over-advance and satisfy a financial covenant, among other things. The Bed Bath & Beyond Group and its advisors engaged in discussions with the ABL Agent and Sixth Street regarding a forbearance agreement, but after multiple rounds of negotiations, no agreement was reached.

124. On January 23, 2023, advisors to the ABL Agent informed the Bed Bath & Beyond Group that, as a result of the ongoing Events of Default, a cash dominion period (the “**Cash Dominion Period**”) had occurred and the ABL Agent had delivered the applicable dominion notices to each applicable depository bank or securities intermediary. Such significant restrictions on the Bed Bath & Beyond Group’s cash use severely hampered its ability to continue operating both in Canada and the United States.

125. Further, on January 25, 2023, the ABL Agent sent a notice of acceleration and default interest (the “**Acceleration Notice**”) to the Bed Bath & Beyond Group (including BBB Canada) as a result of the ongoing Events of Default. The Acceleration Notice notified the Bed Bath & Beyond Group that: (i) the principal amount of the Credit Facilities, together with accrued interest thereon, a FILO premium, and all fees and other obligations owing under the Amended Credit Agreement, were due and payable immediately, (ii) it would be required to put up cash collateral to back letters of credit, and (iii) interest rates under the Amended Credit Agreement were increased by 2%.

126. As of the date of this Affidavit, BBBI has not funded a US \$28 million interest payment on the Senior Notes (the “**Senior Notes Interest Payment**”).

(c) Bed Bath & Beyond explores Strategic Alternatives

127. In light of the Bed Bath & Beyond Group's rapidly declining financial results, the Bed Bath & Beyond Group undertook a further in-depth review in December 2022 and January 2023 of all strategic alternatives in an effort to maximize the value of its business for the benefit of all stakeholders. To assist in its restructuring efforts, the Bed Bath & Beyond Group retained Kirkland & Ellis LLP as restructuring counsel in the United States, Osler, Hoskin & Harcourt LLP ("**Osler**") as restructuring counsel in Canada, Lazard as investment banker, and AlixPartners as financial advisor.

128. Among the various strategic alternatives pursued, Lazard commenced a marketing process for certain of the Bed Bath & Beyond Group's assets, including some or all of the Canadian business. Lazard contacted a multitude of strategic partners, including two with respect to the Canada-only operations. One additional third party independently contacted Lazard about the Canadian business.

129. As a result of Lazard's efforts, on February 6, 2023, BBBI announced the Offering of (i) shares of the BBBI's convertible preferred stock ("**Series A Convertible Preferred Stock**"), (ii) warrants to purchase shares of Series A Convertible Preferred Stock, and (iii) warrants to purchase BBBI's common stock. The Offering is expected to raise approximately US \$225 million of gross proceeds in the Offering, together with an additional approximately US \$800 million of gross proceeds through the issuance of securities requiring the holder thereof to exercise warrants to purchase shares of Series A Preferred Stock in future installments assuming certain condition are met. There is no assurance that the company will receive any or all of the future installments. A failure to receive the full amount of gross proceeds will likely force the Bed Bath & Beyond Group to file for bankruptcy protection in the United States.

130. Concurrently with the closing of the Offering, BBBI and certain of its U.S. and Canadian subsidiaries, the ABL Agent and Sixth Street also agreed to enter into the Second Amendment to the Amended Credit Agreement to: (i) decrease the total revolving commitments under the ABL Facility from US \$1.13 billion to US \$565 million, (ii) result in an outstanding principal amount of US \$428,897,500 as a result of the call protection being capitalized as principal to the initial loans under the FILO Facility, and (iii) increase the loans available under the FILO Facility by US \$100 million. Pursuant to the Second Amendment, each of the ABL Agent and Sixth Street agreed to waive any outstanding defaults or events of default under the Credit Facilities and rescind the Acceleration Notices.

131. Under the Second Amendment, among other things:

- (a) BBBI is required to apply all net cash proceeds received from the upsized FILO Facility and the Offering to repay outstanding revolving loans under the ABL Facility;
- (b) the borrowers will be permitted to continue borrowing under the ABL Facility subject to availability thereunder;
- (c) the borrowers are required to use proceeds from certain dispositions of assets and subsequent equity offerings to pay down outstanding borrowings under the Credit Facilities; and
- (d) BBBI is required to make the Senior Notes Interest Payment before expiry of the 30-day grace period (i.e., on or before March 3, 2023) using availability under the Credit Facilities.

132. In its public disclosure announcing the Offering, BBBI confirmed that unless the Offering closes in accordance with its terms, BBBI will not have the financial resources to satisfy its payment obligations under the Credit Facilities or the Senior Notes and would likely be required to file for bankruptcy protection. In that scenario, BBBI confirmed that equity holders would likely not receive any recovery. Attached as **Exhibit “M”** is BBBI’s Form 8-K filed with the SEC on February 6, 2023 with respect to the Offering, the Second Amendment, and the continuing risks with respect thereto.

133. Notwithstanding the best efforts of the Bed Bath & Beyond Group and its advisors, including Lazard, and after active engagement with a number of third parties, no acceptable bids were received for any executable transaction involving the Canada-only business. In particular, of the three parties who expressed interest in the Canadian business: (i) one was only interested in assets owned by BBBI and its U.S. subsidiaries; (ii) one was interested both in assets owned by BBBI and its U.S. subsidiaries and by BBB Canada, but offered consideration significantly less than the estimated liquidation value for the Canadian-owned inventory; and (iii) one advised that it was only interested in certain assets (not a going concern bid), but subsequently failed to provide any further information or details to Lazard, notwithstanding its multiple requests for same.

134. Following announcement of the Offering on February 6, 2023, Lazard re-initiated discussions with the potential acquiror who had expressed interest in the Canadian-owned inventory and certain other assets to canvass the potential for an increased bid amount. While further discussions were undertaken and information exchanged, no bids have been received that would provide value in excess of the estimated liquidation value of BBB Canada’s inventory.

F. The Urgent Need for Relief under the CCAA

135. BBB Canada is in urgent need of protection under the CCAA. Facing extremely limited funding and significant constraints on its use of cash, the Bed Bath & Beyond Group has reluctantly concluded that there is not enough capital available – even with the lifeline provided by the Offering – to restructure both its business in the United States and properly resuscitate the Canadian business to achieve profitability.

136. Importantly, BBB Canada is not profitable on a standalone basis. In 2021, both the Applicant and BBB LP reported net losses on their respective annual tax filings with the CRA. For the nine-month period ending November 26, 2022, both the Bed Bath & Beyond and buybuy BABY banners in Canada reported significant net losses and negative EBITDA.

137. Even prior to 2022, BBB Canada contributed negative EBITDA margin to the Bed Bath & Beyond Group's consolidated business. While certain Canadian stores were EBITDA positive during the 2021 fiscal year, the economics of maintaining those limited retail locations on a standalone basis are not justifiable. Without a larger operation, the costs of accessing inventory, securing necessary transportation arrangements, and maintaining operational infrastructure would significantly impact the profitability (if any) of these remaining Canadian locations.

138. Further, a significant amount of capital is required to replenish store inventories in Canada, satisfy accounts payable, and rebuild vendor relationships. Inventory levels at Canadian retail locations are at historic lows, due to the financial challenges faced by the enterprise, tightened or unavailable trade credit, and/or the unwillingness of suppliers to ship merchandise.

139. BBB Canada is wholly dependent on BBBI to provide critical Shared Services, including executive, legal, accounting, finance, treasury, tax, human resources, information technology and inventory procurement. BBBI is not prepared to continue offering those Shared Services (which

have not historically been cash settled) or allowing BBB Canada use of the “Bed Bath & Beyond” and “buybuy BABY” marks (which are not owned by BBB Canada) in light of current financial circumstances.

140. Finally, notwithstanding the Second Amendment, the Bed Bath & Beyond Group, including BBB Canada, remain under cash dominion. The Approved Budget (as defined in the Second Amendment) contemplated by the Amended Credit Agreement (against which variances may constitute an event of default) does not provide for any further funding of the Canadian operations. BBB Canada does not have the capacity or ability to independently effect a recapitalization or restructuring of the Canadian operations without the support of BBBI. BBB Canada is insolvent from a balance sheet and cash flow perspective.

141. Accordingly, after consideration by BBB Canada of all strategic alternatives, including an unsuccessful attempt to achieve a going concern solution for the Canadian business, and without any ability to access further funding under the Approved Budget, on February 9, 2023, BBBI resolved to file the Applicant for creditor protection under the CCAA. The Bed Bath & Beyond Group believes that these CCAA proceedings are the only practical means of ensuring a fair and orderly wind-down in the interests of all stakeholders.

G. Relief Sought

(a) Stay of Proceedings

142. The Applicant urgently requires a stay of proceedings and other protections provided by the CCAA so that it will have the breathing room to develop and conduct a controlled and orderly wind-down of operations in Canada for the benefit of all stakeholders.

143. As noted above, while BBB LP is not an applicant in this proceeding, the Applicant seeks to have the stay of proceedings and other benefits of the Initial Order under the CCAA extended to BBB LP as it is related, carries on operations that are integral to the business of the Applicant, is party to all Canadian retail leases, and is a borrower under the Credit Facilities.

144. Having regard to the circumstances, I believe that the granting of a stay is in the best interests of BBB Canada and its stakeholders. The stay will provide BBB Canada with the time required to develop and oversee an orderly wind-down process which, in turn, will help to protect the interests of BBB Canada's stakeholders, including associates, suppliers, landlords, and customers.

(b) Stay of Certain Derivative Claims against BBBI

145. As discussed above, most of the retail leases to which BBB LP is party in Canada are subject to an indemnity by BBBI in favour of the landlord. All the indemnities contain language providing that BBBI's obligations are not affected by the bankruptcy or insolvency of the tenant or disclaimer of the lease. The proposed Initial Order includes a temporary stay of any proceeding against or in respect of BBBI arising out of or in connection with any indemnity, guarantee, or surety relating to a lease of real property by BBB LP or the Applicant. The proposed Initial Order also provides that any landlord claim pursuant to a guarantee in relation to either BBB LP or the Applicant shall be unaffected and shall not be released or affected in any way in any Plan filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.

146. BBB Canada believes that this relief is necessary to allow it to have sufficient "breathing space" under the CCAA to focus its resources on a fair and orderly wind down process. Any

derivative litigation against BBBI would necessarily require the participation of BBB Canada and would result in a significant distraction of the already limited senior management in Canada from the goals of this proceeding. Further, it is crucial that BBBI's resources be focused on providing the Shared Services and other support to wind-down process over the next several months in Canada. Such resources are already significantly taxed addressing the financial distress of the broader Bed Bath & Beyond Group and efforts to right size U.S. operations and implement its restructuring initiatives. It is imperative that BBBI not be distracted by derivative litigation at this time.

(c) Appointment of Monitor

147. It is proposed that Alvarez & Marsal Canada Inc. ("**A&M**") will act as monitor (in such capacity, the "**Monitor**") in respect of the Applicant and BBB LP in the CCAA proceedings if the proposed Initial Order is issued. A&M has consented to act as the Monitor in these CCAA proceedings, a copy of which consent is attached hereto as **Exhibit "N"**.

(d) Funding of these CCAA Proceedings

148. The Applicant, with the assistance of A&M, has prepared cash flow projections up to and including May 11, 2023. A copy of the cash flow statement is attached hereto as **Exhibit "O"**. The cash flow projections show that the Applicant will have sufficient liquidity to fund its ongoing operations using its cash on hand and proceeds from the proposed liquidation (discussed further below) during the proposed stay period should the stay of proceedings be granted, and the orderly wind-down process commence as forecast.

149. As BBB Canada requires the use of its cash on hand to fund these CCAA proceedings, the draft Initial Order provides that any sweep rights exercised by the Lenders pursuant to the

Amended Credit Agreement with respect to BBB Canada may only be exercised if BBB Canada will continue to hold at least US \$12 million of cash immediately after the applicable sweep and such funds constitute repayment of obligations under, and subject to, the Amended Credit Agreement.

(e) Payments During the CCAA Proceedings

150. During the course of these CCAA proceedings, BBB Canada intends to make payments for goods and services supplied to it post-filing in the ordinary course, as set out in the cash flow projections described above and as permitted by the Initial Order.

151. BBB Canada is proposing in the Initial Order that it be authorized, but not required, and in all cases with the consent of the Monitor, to make payments for goods or services actually supplied to BBB Canada prior to the date of the Initial Order by third-party suppliers or service providers up to a maximum aggregate amount of \$500,000 if, in the opinion of BBB Canada, the supplier or service provider is critical to the orderly wind-down of BBB Canada's business.

(f) Liquidation of the Canadian Operations

152. As part of the overall liquidation and wind-down of BBB Canada, the Applicant intends to file a motion shortly after the granting of the Initial Order seeking an Order approving:

- (a) a consulting agreement with Hilco Merchant Resources, LLC ("**Hilco**") regarding the liquidation of the merchandise ("**Merchandise**") and owned furnishings, trade fixtures, equipment and improvements to real property ("**FF&E**") that are located in each of the Canadian retail stores (the "**Canadian Hilco Agreement**"); and

- (b) the proposed sale guidelines for the orderly liquidation of the Merchandise and FF&E in Canada.

153. Hilco has been selected by BBB Canada to assist in the liquidation based on its in-depth expertise and knowledge of the Bed Bath & Beyond Group's business, merchandise, and store operations. Over the past two years, Hilco has been engaged, and is currently engaged, by the Bed Bath & Beyond Group pursuant to a Letter Agreement Governing Inventory Disposition for each of the Bed Bath & Beyond and buybuy BABY banners to facilitate numerous store closures including, most recently, the closure of the approximately 150 Bed Bath & Beyond banner stores announced in August 2022.

154. Accordingly, based on Hilco's extensive expertise and knowledge regarding the Bed Bath & Beyond Group, and in order to ensure that Hilco can continue uninterrupted the liquidation of the approximately 150 stores already underway, the BBB Canada concluded that: (i) Hilco's services are necessary for a seamless and efficient large-scale store closing process and to maximize the value of the saleable Merchandise and FF&E; and (ii) Hilco is qualified and capable of performing the required tasks in a value-maximizing manner.

155. The proposed wind-down of BBB Canada's operations is currently contemplated to run for ten weeks. The terms of the Canadian Hilco Agreement are currently under discussion and will be provided once finalized.

156. The Bed Bath & Beyond Group, in consultation with Hilco and AlixPartners, estimate that the aggregate proceeds from the liquidation of the Merchandise and FF&E will be approximately \$40.5 million in Canada.

157. The wind-down process must be commenced as soon as possible to maximize recoveries and limit costs by ensuring that BBB Canada can exit from all retail stores as soon as practicable and avoid further rent, employee costs, critical supplier/service provider fees, bank fees, and other ongoing amounts. In the circumstances, any delay in commencing the wind-down process may compromise the net recoveries generated from the sale of BBB Canada's Merchandise and FF&E.

(g) Administration Charge

158. The Applicant proposes that the Monitor, its counsel, and counsel to BBB Canada be granted a Court-ordered charge as security for their respective fees and disbursements relating to services rendered in respect of BBB Canada (the "**Administration Charge**"). With the concurrence of the proposed Monitor, the Applicant is proposing that the Administration Charge for the first ten days be limited to \$0.55 million and will be seeking to increase the charge at the comeback hearing. The Administration Charge is proposed to have first priority over all other charges and was developed in consultation with the proposed Monitor.

(h) D&O Charge

159. An orderly wind-down of BBB Canada will only be possible with the continued participation of BBB Canada's directors, officers, management, and employees who are essential to the viability of the orderly wind-down of BBB Canada's business.

160. I am advised by Mr. Wasserman of Osler and believe that, in certain circumstances, directors of Canadian companies can be held liable for certain obligations of a company owing to employees and government entities, which may include unpaid accrued wages, unpaid accrued vacation pay, and unremitted sales, goods and services, and harmonized sales taxes. BBB Canada

estimates, with the assistance of A&M in its capacity as proposed Monitor, that these obligations may amount to as much as approximately \$7.8 million during the initial 10-day stay period, increasing to \$9.4 million by the comeback hearing.

161. It is my understanding that BBB Canada's present and former directors and officers who are or were employed by the Applicant or BBB LP are among the potential beneficiaries under a liability insurance policy that covers an aggregate limit of US \$10 million, plus various excess insurance policies that together provide US \$40 million of excess coverage above the primary policy, as well as a Side A DIC policy providing US \$40 million of coverage. I understand that the foregoing insurance policies cover not only BBB Canada, but also all present and former directors and officers of all corporate entities in the Bed Bath & Beyond Group. I also understand that the D&O insurance has various exceptions, exclusions, and carve-outs where coverage may not be available. I therefore do not believe that these insurance policies provide sufficient coverage against the potential liability that the directors and officers could incur in relation to these CCAA proceedings.

162. In light of the complexity and scope of BBB Canada's operations and potential liabilities, and the uncertainty surrounding available indemnities and insurance, the directors and officers have indicated to the Applicant that their continued service to BBB Canada and involvement in this proceeding is conditional upon the granting of an order under the CCAA that grants a charge in favour of the directors and officers of BBB Canada (the "**D&O Charge**"). With the concurrence of the proposed Monitor, BBB Canada is proposing that the D&O Charge for the first ten days be limited to \$7.5 million and will be seeking to increase the charge at the comeback hearing. The quantum of the D&O Charge was developed in consultation with the Monitor.

163. The D&O Charge is proposed to be subordinate to the Administration Charge. The D&O Charge is necessary so that BBB Canada may benefit from its directors' and officers' experience with BBB Canada's business and industry, and so that its directors and officers can guide BBB Canada's wind down.

H. Conclusion

164. I am confident that granting the Initial Order sought by the Applicant is in the best interests of BBB Canada and its stakeholders, generally. Without the stay of proceedings, the Applicant faces an immediate and uncontrolled cessation of operations rather than a responsible, controlled, and orderly wind-down. I believe that these CCAA proceedings are the only viable method to effect a controlled and orderly wind-down process for the benefit of all stakeholders.

SWORN BEFORE ME over video
teleconference this 9th day of February, 2023
pursuant to O. Reg 431/20, Administering
Oath or Declaration Remotely. The affiant was
located in the City of New York, in the State
of New York while the Commissioner was
located in the City of Toronto, in the Province
of Ontario.



Commissioner for Taking Affidavits
Emilie Dillon (LSO No. 85199L)



Holly Etlin

THIS IS **EXHIBIT “D”** REFERRED TO IN THE AFFIDAVIT OF HOLLY ETLIN SWORN BEFORE ME over video teleconference this 15th day of February, 2023 pursuant to O. Reg 431/20, Administering Oath or Declaration Remotely. The affiant was located in the City of New York, in the State of New York while the Commissioner was located in the City of Toronto, in the Province of Ontario.



Commissioner for Taking Affidavits
Viktor Nikolov (LSO No. 84503P)



Toronto

February 10, 2023

Blair McRadu
Direct Dial: 416.862.4204
bmcradu@osler.com

Montréal

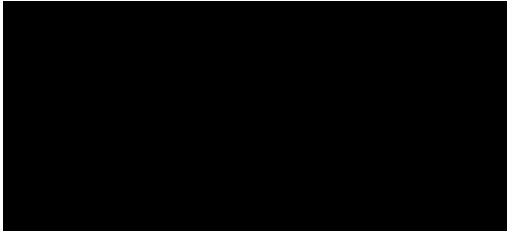
Sent By Electronic Mail

Calgary

Ottawa

Vancouver

New York



Re: Grant Crossing Bed Bath & Beyond

Earlier today, BBB Canada Ltd. and Bed Bath & Beyond Canada L.P. (collectively “**BBB Canada**”) were granted creditor protection under the *Companies’ Creditors Arrangement Act* (“**CCAA**”), pursuant to an initial order (the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) (the “**CCAA Proceedings**”). A copy of the Initial Order can be found at the Monitor’s website below.

We are counsel for BBB Canada. Alvarez & Marsal Canada, Inc. has been appointed as Monitor in the CCAA Proceedings.

BBB Canada Wind-down

In connection with the CCAA Proceedings, BBB Canada currently intends to wind-down its operations in Canada and conduct store closings at each of its 54 Bed Bath & Beyond stores and 11 buybuy BABY stores with the assistance of a third party liquidator. BBB Canada intends to seek Court approval of a proposed liquidation agreement and typical sale guidelines at a hearing to be scheduled for February 21, 2023. We expect that the liquidation sales will begin shortly after Court approval of same.

Key Initial Order Provisions

The Initial Order provides that rent shall be paid twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears).

The Initial Order also provides that: (i) no proceeding or enforcement process shall be commenced or continued against BBB Canada at this time; and (ii) proceedings against Bed Bath & Beyond Inc. arising out of or in connection with an indemnity, guarantee or surety relating to a lease of real property by BBB Canada are stayed, until and including February 21, 2023.

OSLER

Page 2

Additional Information

Kindly advise if you have retained external counsel in connection with the matters noted herein and we will correspond directly with them.

Further information relating to the CCAA proceedings, including materials filed in connection therewith, is available on the Monitor's website at: www.alvarezandmarsal.com/BBBCanada.

Yours very truly,



Blair McRadu
Associate

BM

THIS IS **EXHIBIT “E”** REFERRED TO IN THE AFFIDAVIT OF HOLLY ETLIN SWORN BEFORE ME over video teleconference this 15th day of February, 2023 pursuant to O. Reg 431/20, Administering Oath or Declaration Remotely. The affiant was located in the City of New York, in the State of New York while the Commissioner was located in the City of Toronto, in the Province of Ontario.



Commissioner for Taking Affidavits
Viktor Nikolov (LSO No. 84503P)

From: Communications <Communications@bedbath.com>
Sent: Friday, February 10, 2023 4:04 PM
Subject: An Update on Canada Operations

Team,

In recent months, Bed Bath & Beyond has been implementing large-scale strategic changes to our operations to manage our business as efficiently as possible.

Today, we are sharing the news that we have made the difficult decision to wind-down operations in Canada.

BBB Canada Ltd. and Bed Bath & Beyond Canada L.P. (collectively “BBB Canada”) filed for and were granted creditor protection under the *Companies’ Creditors Arrangement Act* (“CCAA”) earlier today, pursuant to an initial order (the “Initial Order”) of the Ontario Superior Court of Justice (Commercial List) (the “Court”) (the “CCAA Proceedings”).

In connection with the CCAA Proceedings, BBB Canada is closing all Bed Bath & Beyond and buybuy BABY stores in Canada and exiting the Canadian marketplace. In the coming days, we will communicate details about how the CCAA Proceedings will affect you in your role.

We expect to be back in Court in ten days to discuss the timeline and process. We are committed to sharing information following that hearing, as we are able.

In the meantime, your employment with the Company continues and associates will be paid their salary or hourly wages for all services performed. There is still important work to be done to efficiently wind down our presence in Canada. Additionally, our stores and business remain open at this time, and we hope to continue the level of service that customers expect from us.

We want to genuinely thank you for your countless contributions and dedication to our business, our customers and each other. We will be sharing more throughout this process. If you have any questions in the meantime, please reach out to your People Leader.

Thank you,

Mara Sirhal

Director, Bed Bath & Beyond Canada L.P.

Greg Dyer

Vice President, GM, Bed Bath & Beyond - Canada

THIS IS **EXHIBIT “F”** REFERRED TO IN THE AFFIDAVIT OF HOLLY ETLIN SWORN BEFORE ME over video teleconference this 15th day of February, 2023 pursuant to O. Reg 431/20, Administering Oath or Declaration Remotely. The affiant was located in the City of New York, in the State of New York while the Commissioner was located in the City of Toronto, in the Province of Ontario.



Commissioner for Taking Affidavits
Viktor Nikolov (LSO No. 84503P)

CONSULTING AGREEMENT

This Consulting Agreement, dated as of February 15, 2023 (this “Agreement”) is made by and between **BED BATH & BEYOND CANADA L.P.** (the “Merchant”) and a contractual joint venture comprised of **HILCO MERCHANT RETAIL SOLUTIONS ULC, GORDON BROTHERS CANADA ULC, TIGER ASSET SOLUTIONS CANADA, ULC, and B. RILEY RETAIL CANADA ULC** (each a company organized under the laws of its province of organization, and affiliated respectively with Hilco Merchant Resources, LLC with a principal place of business located at 5 Revere Drive, Suite 206, Northbrook, IL 60062), Gordon Brothers Retail Partners, LLC with a principal place of business located at 800 Boylston Street, 27th Floor, Boston, MA 02199, Tiger Capital Group, LLC, with a principal place of business located at 60 State Street, Boston, MA 02109, and B. Riley Retail Solutions, LLC, with a principal place of business located at 21255 Burbank Blvd., Suite 400 Woodland Hills, CA 91367 (collectively, the “Consultant”, and together with the Merchant, the “Parties” and each a “Party”), under which Consultant shall act as the exclusive consultant for the purpose of conducting a sale of certain Merchandise (as defined below) at the Merchant’s stores set forth on Exhibit 1A (each a “Store”, and collectively the “Stores”) and Merchant’s warehouse set forth on Exhibit 1B annexed hereto (the “Warehouse”) through a “Store Closing”, “Everything Must Go”, “Everything on Sale” or similar themed sale (the “Sale”) in accordance with the terms of the sale guidelines substantially in the form attached hereto as Exhibit B (the “Sale Guidelines”). Only Merchant-approved Sale terminology, including the foregoing advertising handles, will be utilized at each Store.

R E C I T A L S:

WHEREAS, Merchant is subject to an Initial Order (as amended, restated or otherwise modified from time to time, the “Initial Order”) of the Ontario Superior Court of Justice (Commercial List) (the “Court”) dated February 10, 2023 pursuant to which, among other things, it has received protection under the *Companies’ Creditors Arrangement Act* (the “CCAA Proceedings”) and Alvarez & Marsal Canada Inc. has been appointed as monitor of the Merchant (in such capacity, the “Monitor”), and Merchant intends to seek an order in the CCAA Proceedings approving, among other things, this Agreement and the conduct of the Sale, in accordance with the terms hereof and the Sale Guidelines (the “Approval Order”).

WHEREAS Consultant is willing to serve as the Merchant’s exclusive consultant for the purpose of providing such consulting services, upon the terms and conditions and in the manner set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

A. Merchandise

For purposes hereof, “Merchandise” shall mean all inventory that is owned by Merchant and actually sold in the Stores during the Sale Term (as defined below), the aggregate amount of which shall be determined using the gross rings inventory taking method, which may include inventory that (i) is located at, or in transit to the Stores as of the Sale Commencement Date, and/or (ii) is located at the Merchant’s Warehouse and is earmarked for sale in the Stores by the Merchant prior to the Sale Commencement Date; provided, however, the Merchant and the Consultant agree that “Merchandise” shall expressly exclude: (1) goods which belong to sublessees, licensees or concessionaires of Merchant; (2) goods held by the Merchant on memo or consignment, unless otherwise agreed to by Merchant and Consultant; (3) owned furnishings, trade fixtures, equipment, machinery, office supplies, conveyor systems, racking, rolling stock, any vehicles or other modes of transportation, and other personal property (collectively, “FF&E”), or improvements to real property, that are located in the Stores, Warehouse, and corporate office located in Mississauga, Ontario (the “Corporate Office”); (4) damaged or defective merchandise that cannot be sold; (5) Additional Consultant Goods; and (6) gift cards (third party and Merchant branded).

B. Sale Term

1) For each Store, the Sale shall commence on the first business day following the entry of the Approval Order, which shall in no event be later than February 24, 2023 (the “Sale Commencement Date”) and conclude no later than April 30, 2023 (the “Sale Termination Date”); provided, however, that the Parties may, in consultation with the Monitor, mutually agree in writing to extend the Sale Termination Date or to terminate the Sale at any Store prior to the Sale Termination Date. The period between the Sale Commencement Date and the Sale Termination Date shall be referred to as the “Sale Term.”

2) At the conclusion of the Sale, Consultant shall surrender the premises for each Store to Merchant (a) in “broom swept” condition, subject to Consultant’s right pursuant to Section F below to abandon in a neat and orderly manner all unsold FF&E, and (b) if requested by Merchant, in accordance with the lease requirements for such premises; provided, however, that, if Merchant requests that Consultant surrender any premises in accordance with the lease requirements, Merchant shall bear all costs and expenses associated with surrendering the premises in accordance with the lease requirements for such premises to the extent such expenses were incurred by Consultant in accordance with a budget mutually agreed to in writing between the Consultant and Merchant. At the conclusion of the Sale at each Store, Consultant shall photographically document the condition of each such Store and provide such photographs to Merchant within ten (10) days. Photographs shall reference with specificity each Store by number, name and/or location.

C. Project Management

1) Consultant’s Undertakings

During the Sale Term, Consultant shall, in collaboration with Merchant, (a) provide qualified supervisors (the “Supervisors”) engaged by Consultant to oversee the management of the Stores and the Sale; (b) recommend appropriate point-of-sale and external advertising for the Stores, approved in advance by Merchant; (c) recommend appropriate discounts of Merchandise, staffing levels for the Stores, and appropriate bonus and incentive programs, if any, for the Stores’ employees, in each case approved in advance by Merchant in consultation with the Monitor; (d) oversee display of Merchandise for the Stores; (e) to the extent that information is available, evaluate sales of Merchandise by category and sales reporting and monitor expenses; (f) maintain the confidentiality of all proprietary or non-public information regarding Merchant in accordance with the provisions of the confidentiality agreements signed by the Parties; (g) assist Merchant in connection with managing and controlling loss prevention and employee relations matters; (h) to the extent necessary, assist Merchant in obtaining all required permits and governmental consents required to conduct the Sale except as otherwise provided in the Approval Order; and (j) provide such other related services deemed necessary or appropriate by Merchant and Consultant, in consultation with the Monitor.

The Consultant shall provide qualified supervision to oversee the conduct of the Sale in the Stores as may be required to maximize sales, the expense for which is included in the Expense Budget (defined below). In connection with the Sale, the Consultant shall indirectly retain and engage the Supervisors. The Supervisors shall not be deemed to be employees or consultants of the Merchant in any manner whatsoever; nor do the Supervisors have any relationship with the Merchant by virtue of this Agreement or otherwise which creates any liability or responsibility on behalf of the Merchant for the Supervisors. During the Sale Term, the Supervisors shall perform the services provided for herein during normal Store operating hours and for the period of time prior to the Stores opening and subsequent to the Stores closing, as required in connection with the Sale, in the Consultant’s discretion. In consideration of Consultant’s engagement of the Supervisors, the Merchant agrees to pay the Consultant, as a Sale Cost (defined below), the Supervisor-related wages, fees paid to arm’s length third parties, travel, expenses, deferred compensation and third-party payroll costs and expenses, in accordance with and subject to the Expense Budget (collectively, the “Supervisor Costs”). The Supervisor Costs set forth in the Expense Budget include, among other things, industry standard deferred

compensation. The Merchant shall reimburse Consultant for all Supervisor Costs weekly, based upon invoices or other documentation reasonably satisfactory to the Merchant and the Monitor.

Title to all Merchandise and FF&E shall remain with Merchant at all times during the Sale Term until such Merchandise is sold. Although the Consultant shall undertake its obligations under this Agreement in a manner designed to achieve the desired results of the Sale and to maximize the benefits to the Merchant, the Merchant expressly acknowledges that the Consultant is not guaranteeing the results of the Sale. All sales of Merchandise and FF&E in the Stores shall be made in the name and on behalf of the Merchant, and all sales during the Sale Term shall be final with no returns accepted or allowed. All sales of Merchandise shall be by cash, gift card, gift certificate, merchandise credit, debit card or credit card in accordance with Merchant's policies and subject to the terms of the Initial Order. The Parties acknowledge and agree that no Stores will honor returns with respect to any items purchased during the Sale. The Stores shall accept loyalty points, gift cards, gift certificates and similar items issued by the Company prior to the Sale Commencement Date up to and including fifteen (15) days after the Sale Commencement Date.

Without limiting the generality of the foregoing, if and to the extent the use or other handling of any Personal Information (defined below) is necessary for Consultant to perform its obligations hereunder, Consultant shall comply with all Data Security Requirements (defined below) and such other reasonable restrictions requested by Merchant. For purposes of this Agreement, "Personal Information" means any natural person's name, street address, telephone number, e-mail address, social security number, driver's license number, passport number, credit card number, or user or account number, or any other piece of information that, individually or when combined with other information, allows the identification of a natural person or is otherwise considered personally identifiable information or personal data protected under any applicable Data Security Requirement. For purposes of this Agreement, "Data Security Requirements" means, collectively, all of the following to the extent relating to privacy, security, or security breach notification requirements: (a) Merchant's own rules, policies, and procedures; (b) all applicable statutes and regulations; (c) industry standards applicable to the industry in which the Merchant's business is conducted (including, as applicable, the Payment Card Industry Data Security Standard (PCI DSS)); and (d) contracts into which Merchant has entered or by which it is otherwise bound, provided such contracts (or the requirements of such contracts) are provided to Consultant.

The Parties expressly acknowledge and agree that Merchant shall have no liability to the Supervisors for wages, bonuses, benefits, severance pay, termination pay, vacation pay, pay in lieu of notice of termination or any other liability arising from Consultant's hiring or engagement of the Supervisors, and the Supervisors shall not be considered employees of Merchant.

2) Merchant's Undertakings

During the Sale Term, Merchant shall: (a) be the employer of the Stores' employees, other than the Supervisors; (b) be responsible for all taxes, costs, expenses, accounts payable, and other liabilities relating to the Stores, the Stores' employees and other representatives of Merchant (in accordance with the terms of this Agreement); (c) prepare and process all tax forms and other documentation with respect thereto; (d) collect all HST/GST and other applicable taxes assessed on the sale of the Merchandise and FF&E and pay them to the appropriate taxing authorities for the Stores; (e) use reasonable efforts to cause Merchant's employees to cooperate with Consultant and the Supervisors; (f) execute all agreements mutually determined by the Merchant and Consultant, in consultation with the Monitor, to be necessary or desirable for the operation of the Stores during the Sale; (g) arrange for the ordinary maintenance of all point-of-sale equipment required for the Stores; and (h) use reasonable efforts to ensure that Consultant has quiet use and enjoyment of the Stores for the Sale Term in order to perform its obligations under this Agreement.

Merchant shall provide throughout the Sale Term central administrative services necessary for the Sale, including (without limitation) customary POS administration, sales audit, cash reconciliation,

accounting, and payroll processing, as currently available through the Merchant's existing accounting and IT systems, all at no cost to Consultant.

The Parties expressly acknowledge and agree that Consultant shall have no liability to Merchant's employees for wages, bonuses, benefits, severance pay, termination pay, vacation pay, pay in lieu of notice of termination or any other liability arising from Merchant's employment, hiring or retention of its employees, and such employees shall not be considered employees of Consultant.

D. The Sale

All sales of Merchandise shall be made on behalf of Merchant. Consultant does not have, nor shall it have, any right, title or interest in the Merchandise. All sales of Merchandise shall be by cash, gift card, gift certificate, merchandise credit, or credit or debit card and, at Merchant's discretion, by check or otherwise in accordance with Merchant's policies and in each case subject to the terms of the Initial Order, and shall be "final" with no returns accepted or allowed, unless otherwise directed by Merchant. Merchant and Consultant shall not sell gift cards during the Sale Term.

E. Consultant Fee and Expenses in Connection with the Sale

(1) In consideration of its services hereunder, Merchant shall pay Consultant a "Base Fee" equal to one and one-half percent (1.5%) of the Gross Proceeds of Merchandise sold at the Stores. For purposes of this Agreement, "Gross Proceeds" means gross receipts from sales of Merchandise during the Sale Term, net of applicable HST/GST.

(2) In addition to the Base Fee, and not in lieu thereof, the Merchant shall pay to Consultant from Gross Proceeds an additional fee based upon one of the following thresholds of "Net Recovery Percentage" (defined below) (e.g., calculated back to first dollar) (the "Consultant Incentive Fee"):

| Net Recovery Threshold | Consultant Incentive Fee |
|-------------------------------|--------------------------------------|
| 39.50%-39.99% | An additional 0.875% of Net Proceeds |
| 40.00%-40.49% | An additional 1.125% of Net Proceeds |
| 40.50%-40.99% | An additional 1.375% of Net Proceeds |
| 41.00%-41.49% | An additional 1.625% of Net Proceeds |
| 41.50% and above | An additional 1.875% of Net Proceeds |

The Consultant Incentive Fee referenced above as earned in each case shall be in addition to the Base Fee and shall be calculated back to the first dollar received; provided, that Consultant agrees that the Consultant Incentive Fee shall not exceed \$1,500,000 in the aggregate. For purposes of calculating the Consultant Incentive Fee under this Agreement, "Net Recovery" shall mean gross receipts from sales of Merchandise during the Sale Term, net of applicable HST/GST, *minus* the Costs of the Sale identified in the Expense Budget (defined below) attached as Exhibit C hereto and incorporated herein by reference. For the avoidance of doubt, Costs in the Expense Budget shall include the Base Fee payable by Merchant to Consultant.

Merchant shall be responsible for all expenses of the Sale, including (without limitation) all Store level operating expenses, all costs and expenses related to Merchant's other retail store operations, and all of Consultant's documented out of pocket expenses (the "Costs"). To control Costs, Merchant and Consultant have established an aggregate budget (the "Expense Budget") of certain delineated expenses, including (without limitation) payment of the costs of supervision (including (without limitation) Supervisors' wages, fees, travel, and deferred compensation), advertising and signage costs, and other miscellaneous expenses incurred by Consultant, including reasonable legal fees. The Expense Budget for the Sale is attached hereto as Exhibit C. The Expense Budget may only be modified with the consent of the Monitor and by mutual written (including email) agreement of Consultant and Merchant. The costs of supervision set forth on Exhibit

C include, among other things, industry standard deferred compensation. Notwithstanding anything herein to the contrary, unless consented to by the Monitor and otherwise agreed to by Merchant in writing, Merchant shall not be obligated to pay costs of supervision and advertising costs that have not been included, or provided for, in the Expense Budget, as may be amended in accordance with the terms of this Agreement. Merchant shall reimburse Consultant for all Costs up to the aggregate budgeted amount set forth in the Expense Budget.

Concurrently with the execution of, and as a condition to Consultant's obligations under, this Agreement, Merchant shall fund to Consultant \$735,000 (the "Special Purpose Payment") which shall be held by Consultant on account of any final amounts owing to Consultant hereunder until the Final Reconciliation (defined below) (and Merchant shall not apply the Special Purpose Payment to, or otherwise offset any portion of the Special Purpose Payment against, any weekly reimbursement, payment of fees, or other amount owing to Consultant under this Agreement prior to the Final Reconciliation). Without limiting any of Consultant's other rights, Consultant may apply the Special Purpose Payment to any unpaid obligation owing by Merchant to Consultant under this Agreement following the completion of the Final Reconciliation. Any portion of the Special Purpose Payment not so paid shall be returned to Merchant within five (5) business days following the Final Reconciliation.

F. Furniture, Fixtures and Equipment

Consultant shall undertake to sell the FF&E in the Stores, the Warehouse and Corporate Office that is owned by the Merchant from the Stores and Warehouse themselves. Merchant shall be responsible for all reasonable and documented costs and expenses incurred by Consultant in connection with the sale of the FF&E, which costs and expenses shall be incurred pursuant to a written budget or budgets (in addition to the Expense Budget) to be established from time to time with the consent of the Monitor and by mutual agreement of the Parties (such costs and expenses, not including the Costs, shall be referred to as the "FF&E Costs"). Consultant shall have the right to abandon at the Stores and Warehouse any unsold FF&E.

In consideration for providing the services set forth in this Section F, Consultant shall be entitled to a commission from the sale of the FF&E equal to twelve and one-half percent (12.5%) of the gross proceeds of the sale of the FF&E (net only of applicable HST/GST) (the "FF&E Commission").

Notwithstanding anything in this Agreement to the contrary, Consultant shall not have any obligation whatsoever to cap any electrical or plumbing outlets or purchase, sell, make, store, handle, treat, dispose, or remove any hazardous materials from the Stores or otherwise. Consultant shall have no liability to any party for any environmental action brought: (i) that is related to the storage, handling, treatment, disposition, generation, or transportation of hazardous materials, or (ii) in connection with any remedial actions associated therewith or the Stores or Warehouse. The Merchant (and not Consultant) shall be solely responsible to cap all electrical items and plumbing outlets and to remove all hazardous materials from the Stores and Warehouse.

G. Payments & Accounting

During the Sale Term, all accounting matters (including, without limitation, the determination of the Consultant Incentive Fee, Costs, FF&E Commission, FF&E Costs and all other fees, expenses, or other amounts reimbursable or payable hereunder) shall be reconciled by the Parties, in consultation with the Monitor, on every Wednesday for the prior calendar week and the amounts determined to be owing for such prior calendar week pursuant to such reconciliation shall be paid within seven (7) days after each such weekly reconciliation.

The Parties shall, in consultation with the Monitor, complete a final reconciliation and settlement of all amounts payable pursuant to this Agreement (including, without limitation, the determination of the Consultant Incentive Fee, Costs, FF&E Commission, FF&E Costs and all other fees, expenses, or other amounts reimbursable or payable hereunder) no later than forty five (45) days following (a) the Sale Termination Date for the last Store (the "Final Reconciliation"), or (b) the date upon which this Agreement is

terminated in accordance with its terms. Within ten (10) days after the Final Reconciliation, (a) any amounts that are determined to be owing by Merchant to the Consultant shall be paid by the Merchant to the Consultant, and (b) any amounts that are determined to be owing by the Consultant to the Merchant as a result of any overpayments shall be paid by the Consultant to the Merchant.

H. Additional Consultant Goods.

Subject to the Approval Order, Consultant shall have the right to supplement the Merchandise in the Sale at the Stores with additional goods procured by Consultant which are of like kind, and no lesser quality to the Merchandise in the Sale at the Stores (“Additional Consultant Goods”). The Additional Consultant Goods shall be purchased by Consultant as part of the Sale, and delivered to the Stores. Sales of Additional Consultant Goods shall be run through Merchant’s cash register systems; provided, however, that Merchant shall assist with marking, and Consultant shall mark the Additional Consultant Goods, using either a “dummy” SKU or department number, or in such other manner so as to distinguish the sale of Additional Consultant Goods from the sale of Merchandise. Consultant and Merchant shall also cooperate so as to ensure that the Additional Consultant Goods are marked in such a way that a reasonable consumer could identify the Additional Consultant Goods as non-Merchant goods. Additionally, Consultant shall provide signage in the Stores notifying customers that the Additional Consultant Goods have been included in the Sale.

Consultant shall pay to Merchant an amount equal to seven and one-half percent (7.5%) of the gross proceeds (excluding sales taxes) from the sale of Additional Consultant Goods completed during the Sale Term (the “Additional Consultant Goods Fee”), and Consultant shall retain all remaining amounts from the sale of the Additional Consultant Goods. Any amount due from Consultant to Merchant in respect of the sale of Additional Consultant Goods in accordance with this Section H shall be paid not later than three (3) business days following the Parties’ completion of each weekly reconciliation with respect to sales of Additional Consultant Goods sold by Consultant during the prior week (or at such other mutually agreed upon time).

Consultant and Merchant intend that the transactions relating to the Additional Consultant Goods are, and shall be construed as, a true consignment from Consultant to Merchant in all respects and not a consignment for security purposes. Subject solely to Consultant’s obligations to pay to Merchant the Additional Consultant Goods Fee, at all times and for all purposes the Additional Consultant Goods and their proceeds shall be the exclusive property of Consultant, and no other person or entity shall have any claim against any of the Additional Consultant Goods or their proceeds. Merchant shall, at Consultant’s sole cost and expense, insure the Additional Consultant Goods and, if required, promptly file any proofs of loss with regard to same with Merchant’s insurers. Consultant shall be responsible for payment of any deductible under any such insurance in the event of any casualty affecting the Additional Consultant Goods.

Merchant acknowledges, and the Approval Order shall provide, that the Additional Consultant Goods shall be consigned to Merchant as a true consignment under applicable law. Consultant is hereby granted a first priority security interest in and lien upon (i) the Additional Consultant Goods and (ii) the Additional Consultant Goods proceeds, and Consultant is hereby authorized to make any filings and provide notifications to any prior secured parties and which security interest shall be deemed perfected pursuant to the Approval Order without the requirement of any such filings or providing notifications to any prior secured parties (provided that Consultant is hereby authorized to deliver all required notices and file all necessary financing statements and amendments thereof under applicable law identifying Consultant’s interest in the Additional Consultant Goods as consigned goods thereunder and the Merchant as the consignee therefor, and Consultant’s security interest in and lien upon such Additional Consultant Goods and Additional Consultant Goods proceeds).

I. Indemnification

1) Merchant's Indemnification

Merchant shall indemnify, defend, and hold Consultant and its consultants, members, managers, partners, officers, directors, employees, attorneys, advisors, representatives, lenders, potential co-investors, principals, affiliates, and Supervisors (collectively, "Consultant Indemnified Parties" and each a "Consultant Indemnified Party") harmless from and against all liabilities, claims, demands, damages, costs and expenses (including reasonable attorneys' fees) arising from or related to: (a) the willful or negligent acts or omissions of Merchant or the Merchant Indemnified Parties (as defined below); (b) the material breach of any provision of this Agreement by Merchant; (c) any liability or other claims, including, without limitation, product liability claims, asserted by customers, any Store employees (under a collective bargaining agreement or otherwise), or any other person (excluding Consultant Indemnified Parties) against Consultant or a Consultant Indemnified Party, except claims arising from Consultant's negligence, willful misconduct, gross negligence, unlawful behavior or the sale of any Additional Consultant Goods; (d) any harassment, discrimination or violation of any laws or regulations or any other unlawful, tortious or otherwise actionable treatment of Consultant Indemnified Parties or Merchant's customers by Merchant or Merchant Indemnified Parties; and (e) Merchant's failure to pay over to the appropriate taxing authority any taxes required to be paid by Merchant during the Sale Term in accordance with applicable law.

2) Consultant's Indemnification

Consultant shall indemnify, defend and hold Merchant and its consultants, members, managers, partners, officers, directors, employees, attorneys, advisors, representatives, lenders, potential co-investors, principals, and affiliates (other than the Consultant or the Consultant Indemnified Parties) (collectively, "Merchant Indemnified Parties" and each a "Merchant Indemnified Party") harmless from and against all liabilities, claims, demands, damages, costs and expenses (including reasonable attorneys' fees) arising from or related to (a) the willful or negligent acts or omissions of Consultant or the Consultant Indemnified Parties; (b) the breach of any provision of, or the failure to perform any obligation under, this Agreement by Consultant; (c) any liability or other claims made by Consultant Indemnified Parties or any other person (excluding Merchant Indemnified Parties) against a Merchant Indemnified Party arising out of or related to Consultant's conduct of the Sale, except claims arising from Merchant's negligence, willful misconduct, gross negligence, or unlawful behavior; (d) any harassment, discrimination or violation of any laws or regulations or any other unlawful, tortious or otherwise actionable treatment of Merchant Indemnified Parties, or Merchant's customers by Consultant or any of the Consultant Indemnified Parties; (e) any claims made by any party engaged by Consultant as an employee, agent, representative or independent contractor arising out of such engagement, including, without limitation, the Supervisors; and (f) the sale of any Additional Consultant Goods.

J. Insurance

1) Merchant's Insurance Obligations

Merchant shall maintain throughout the Sale Term, liability insurance policies (including, without limitation, products liability (to the extent currently provided), comprehensive public liability insurance and auto liability insurance) covering injuries to persons and property in or in connection with the Stores, and shall, to the extent reasonably practicable, cause Consultant to be named an additional insured with respect to all such policies. At Consultant's request, Merchant shall provide Consultant with a certificate or certificates evidencing the insurance coverage required hereunder. In addition, Merchant shall maintain throughout the Sale Term, in such amounts as it currently has in effect, workers compensation insurance in compliance with all statutory requirements.

2) Consultant's Insurance Obligations

Consultant shall maintain (at its sole cost and expense) throughout the Sale Term, liability insurance policies (including, without limitation, products liability/completed operations, contractual liability, comprehensive public liability and auto liability insurance) on an occurrence basis in an amount of at least two million dollars (\$2,000,000) and an aggregate basis of at least five million dollars (\$5,000,000) covering injuries to persons and property in or in connection with Consultant's provision of services at the Stores. Consultant shall name Merchant as an additional insured and loss payee under such policy, and upon execution of this Agreement provide Merchant with a certificate or certificates evidencing the insurance coverage required hereunder. In addition, Consultant shall maintain throughout the Sale Term, workers' compensation insurance in compliance with all statutory requirements. Further, should Consultant employ or engage third parties to perform any of Consultant's undertakings with regard to this Agreement, Consultant will ensure that such third parties are covered by Consultant's insurance or maintain all of the same insurance as Consultant is required to maintain pursuant to this paragraph and name Merchant as an additional insured and loss payee under the policy for each such insurance.

K. Representations, Warranties, Covenants and Agreements

1) Merchant warrants, represents, covenants and agrees that, subject to the issuance of the Approval Order: (a) Merchant is a limited partnership duly formed, validly existing and in good standing under the laws of the province of Ontario, with full power and authority to execute and deliver this Agreement and to perform its obligations hereunder; (b) the execution, delivery and performance of this Agreement has been duly authorized by all necessary actions of Merchant and this Agreement constitutes a valid and binding obligation of Merchant enforceable against Merchant in accordance with its terms and conditions, and the consent of no other entity or person is required for Merchant to fully perform all of its obligations herein; (c) all ticketing of Merchandise at the Stores has been and will be done in accordance with Merchant's customary ticketing practices; (d) all normal course hard markdowns on the Merchandise have been, and will be, taken consistent with Merchant's customary practices, and (e) subject to the Sale Guidelines and this Agreement, the Stores will be operated in the ordinary course of business in all respects, except as otherwise expressly agreed to by Merchant and Consultant.

2) Each party comprising the Consultant warrants, represents, covenants and agrees that: (a) Consultant is a company duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, with full power and authority to execute and deliver this Agreement and to perform the Consultant's obligations hereunder; (b) the execution, delivery and performance of this Agreement has been duly authorized by all necessary actions of Consultant and this Agreement constitutes a valid and binding obligation of Consultant enforceable against Consultant in accordance with its terms and conditions, and the consent of no other entity or person is required for Consultant to fully perform all of its obligations herein; (c) Consultant shall comply with and act in accordance with any and all applicable federal, provincial and local laws, rules, and regulations, and other legal obligations of all governmental authorities; (d) no non-emergency repairs or maintenance in the Stores will be conducted without Merchant's prior written consent; (e) Consultant will not take any disciplinary action against any employee of Merchant; and (f) Consultant is not a non-resident of Canada pursuant to the *Income Tax Act* and shall provide the Merchant with its relevant sales tax numbers prior to the Sale.

3) Unless otherwise directed by the Merchant and subject to the terms of the Initial Order, the Consultant and the Merchant shall honor gift cards, gift certificates, and merchandise credits at the Stores, in accordance with store operation procedures to be mutually agreed upon between the Merchant and the Consultant, with the full amount of such gift cards and merchandise credits constituting gross proceeds hereunder, up to and including fifteen (15) days after the Sale Commencement Date.

4) The Merchant shall collect all sales taxes and shall be solely responsible for reporting and paying the same to the appropriate taxing authorities in accordance with applicable law.

5) The Merchant shall seek Court approval of this Agreement and the Sale Guidelines pursuant to the Approval Order. The Parties expressly acknowledge and agree that the entering into of this Agreement by the Merchant is subject to the issuance of the Approval Order approving, among other things, this Agreement, the Sale Guidelines and the conduct of the Sale and that should the Approval Order not be obtained, this Agreement shall have no force or effect.

L. Termination

The following shall constitute “Termination Events” hereunder:

- 1) Merchant’s or Consultant’s failure to perform any of their respective material obligations hereunder, which failure shall continue uncured seven (7) days after receipt of written notice thereof to the defaulting Party (an “Event of Default”);
- 2) Any representation or warranty made by Merchant or Consultant is untrue in any material respect as of the date made or at any time and throughout the Sale Term; or
- 3) The Sale is terminated or materially interrupted or impaired for any reason, including but not limited to an order of the Court, other than as a result of an Event of Default by Consultant or Merchant.

If a Termination Event occurs, the non-defaulting Party (in the case of an Event of Default) or either Party (if the Sale is otherwise terminated or materially interrupted or impaired, other than by reason of an order of the Court) may, in its discretion, elect to terminate this Agreement by providing seven (7) business days’ written notice thereof to the other Party and, in the case of an Event of Default, in addition to terminating this Agreement, pursue any and all rights and remedies and damages resulting from such Event of Default. If this Agreement is terminated, Merchant shall be obligated to pay Consultant all amounts due and owing by Merchant to Consultant under this Agreement through and including the termination date.

M. Notices

All notices, certificates, approvals, and payments provided for herein shall be sent by electronic mail or by recognized overnight delivery service as follows: (a) to Merchant: at the address listed above, with a copy to (i) Osler, Hoskin and Harcourt LLP, 100 King Street West, 1 First Canadian Place, Suite 6200, Toronto, ON M5X 1B8, Attn: Marc Wasserman, Esq., Email: mwasserman@osler.com and Dave Rosenblat, Esq., Email: drosenblat@osler.com; (b) to Consultant: Merchant Retail Solutions, ULC c/o Hilco Merchant Resources, LLC, 5 Revere Drive, Suite 206, Northbrook, IL 60062, Attention: Ian S. Fredericks, Email: ifredericks@hilcoglobal.com; and Gordon Brothers Canada ULC c/o Gordon Brothers Retail Partners, LLC, Prudential Tower, 800 Boylston Street, Boston, MA 02119, Attn: Rick Edwards, redwards@gordonbrothers.com, and David Braun, Email: dbraun@gordonbrothers.com, (c) co-counsel to the Consultant, Riemer & Braunstein, LLP, Times Square Tower, Seven Times Square, Suite 2506, New York, New York 10036, Attn: Steven E. Fox, Esq., Email: sfox@riemerlaw.com, and Cassels Brock & Blackwell LLP, Suite 2100, Scotia Plaza, 40 King St. W., Toronto, ON M5H 3C2 Canada, Attn: Jane Dietrich, Esq., Email: jdietrich@cassels.com, or (d) such other address as may be designated in writing by Merchant or Consultant, and in either case, with a copy to the Monitor at: Alvarez & Marsal Canada Inc., 200 Bay St., Toronto, ON M5J 2J1, Attn: Al Hutchens, Email: ahutchens@alvarezandmarsal.com, and Ryan Gruneir, Email: rgruneir@alvarezandmarsal.com, with a copy to Bennett Jones LLP, 3400 One First Canadian Place, P.O. Box 130, Toronto, ON M5X 1A4, Attn: Kevin Zych, Email: zychk@bennettjones.com, and Michael Shakra, Email: shakram@bennettjones.com.

N. Independent Consultant

Consultant's relationship to Merchant is that of an independent contractor without the capacity to bind Merchant in any respect. No employer/employee, principal/agent, joint venture or other such relationship is created by this Agreement. Merchant shall have no control over the hours that Consultant or its employees or assistants or the Supervisors work or the means or manner in which the services that will be provided are performed and Consultant is not authorized to enter into any contracts or agreements on behalf of Merchant or to otherwise create any obligations of Merchant to third parties, unless authorized in writing to do so by Merchant, with the consent of the Monitor.

O. Non-Assignment

Neither this Agreement nor any of the rights hereunder may be transferred or assigned by either Party without the prior written consent of the other Party; provided, however, Merchant may use the services of Consultant in Stores leased by subsidiaries of Merchant. No modification, amendment or waiver of any of the provisions contained in this Agreement, or any future representation, promise or condition in connection with the subject matter of this Agreement, shall be binding upon any Party to this Agreement unless made in writing and signed by a duly authorized representative or agent of such Party. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective legal representatives, successors and permitted assigns.

P. Severability

If any term or provision of this Agreement, as applied to either Party or any circumstance, for any reason shall be declared by a court of competent jurisdiction to be invalid, illegal, unenforceable, inoperative or otherwise ineffective, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. If the surviving portions of the Agreement fail to retain the essential understanding of the Parties, the Agreement may be terminated by mutual consent of the Parties.

Q. Governing Law, Venue, Jurisdiction and Jury Waiver

This Agreement, and its validity, construction and effect, shall be governed by and enforced in accordance with the laws of the Province of Ontario (without reference to the conflicts of laws provisions therein) and the laws of Canada applicable therein. Merchant and Consultant waive their respective rights to trial by jury of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding and/or hearing brought by either Consultant against Merchant or Merchant against Consultant on any matter whatsoever arising out of, or in any way connected with, this Agreement, the relationship between Merchant and Consultant, any claim of injury or damage or the enforcement of any remedy under any law, statute or regulation, emergency or otherwise, now or hereafter in effect.

R. Entire Agreement

This Agreement, together with all additional schedules and exhibits attached hereto, constitutes a single, integrated written contract expressing the entire agreement of the Parties concerning the subject matter hereof. No covenants, agreements, representations or warranties of any kind whatsoever have been made by any Party except as specifically set forth in this Agreement. All prior agreements, discussions and negotiations are entirely superseded by this Agreement.

S. Execution

This Agreement may be executed simultaneously in counterparts (including by means of electronic mail, facsimile or portable document format (pdf) signature pages), any one of which need not contain the

signatures of more than one party, but all such counterparts taken together shall constitute one and the same instrument. This Agreement, and any amendments hereto, to the extent signed and delivered by means of electronic mail, a facsimile machine or electronic transmission in portable document format (pdf), shall be treated in all manner and respects as an original thereof and shall be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person.

T. Canadian Dollars

The Expense Budget expresses amounts in Canadian dollars. All references to monetary amounts in this Agreement are in Canadian dollars.

V. Choice of Language. The parties have specifically required that this Agreement and all related documents be drafted and executed in English. *Les parties aux présentes ont formellement demandé à ce que la présente convention et tous les documents auxquels celle-ci réfère soient rédigés et signés en langue anglaise.*

*[Remainder of Page Intentionally Left Blank]
[Signatures Appear Next Page]*

IN WITNESS WHEREOF, the Merchant and the Consultant have executed this Agreement or caused this Agreement to be executed by their respective officers thereunto duly authorized as of the date first written above.

MERCHANT:

BED BATH & BEYOND CANADA L.P.,
By its general partner BBB Canada Ltd.

By: 
Name:
Its:

[Signatures continued next page]

CONSULTANT:

HILCO MERCHANT RETAIL SOLUTIONS ULC
For the "Consultant"

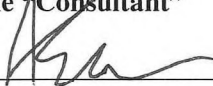
By: 
Name: Ian S. Fredericks
Its: Vice President

Exhibit “1A”

List of Stores

[to be inserted]

Bed Bath & Beyond.2023.Canada
Exhibit A

| Store List | | | | | | |
|------------|----------------|-------------------|---|------------------|-------|-----------------|
| Store # | Concept/Banner | Name | Address | City | State | Selling Sq. Ft. |
| 2001 | BBBY-CA | Richmond Hill | 225 High Tech Road Unit #1 | Richmond Hill | ON | 34,710 |
| 2002 | BBBY-CA | Oakville | 200 North Service Road West | Oakville | ON | 29,723 |
| 2003 | BBBY-CA | Ottawa | 500 Terminal Avenue Unit #818 | Ottawa | ON | 29,732 |
| 2004 | BBBY-CA | Whitby | 1751 Victoria Street East | Whitby | ON | 28,222 |
| 2006 | BBBY-CA | Mississauga | 2975 Argentia Road | Mississauga | ON | 28,378 |
| 2007 | BBBY-CA | Edmonton | 8882 170 Street Suite 2554 | Edmonton | AB | 31,750 |
| 2008 | BBBY-CA | Edmonton | Unit 194 9450 - 137 Avenue NW | Edmonton | AB | 24,989 |
| 2009 | BBBY-CA | Barrie | 80 Concert Way, Unit 1 | Barrie | ON | 28,300 |
| 2010 | BBBY-CA | Brampton | 9125 Airport Road | Brampton | ON | 27,411 |
| 2011 | BBBY-CA | Barrhaven | 3777 Strandherd Drive | Barrhaven | ON | 25,530 |
| 2012 | BBBY-CA | Rocky View | 261055 CrossIron Blvd. | Rocky View | AB | 31,950 |
| 2013 | BBBY-CA | Calgary | 3630 Brentwood Road NW Suite 600 | Calgary | AB | 37,809 |
| 2014 | BBBY-CA | East Gwillimbury | 1-18126 Yonge Street | East Gwillimbury | ON | 28,015 |
| 2015 | BBBY-CA | Dartmouth | 45 Lemlair Row | Dartmouth | NS | 28,180 |
| 2016 | BBBY-CA | Edmonton | 2021-98 Street NW | Edmonton | AB | 31,971 |
| 2017 | BBBY-CA | Charlottetown | 193 Minna Jane Drive | Charlottetown | PEI | 25,000 |
| 2018 | BBBY-CA | Coquitlam | 1175 Woolridge Street | Coquitlam | BC | 25,000 |
| 2019 | BBBY-CA | North Vancouver | 845 Marine Drive Unit 200 | North Vancouver | BC | 33,155 |
| 2020 | BBBY-CA | Red Deer | 5001 19th Street Unit 850 | Red Deer | AB | 25,557 |
| 2021 | BBBY-CA | Cambridge | 70 Pinebush Road Unit 1 | Cambridge | ON | 24,595 |
| 2022 | BBBY-CA | Calgary | 306 Glenmore Trail SW | Calgary | AB | 29,722 |
| 2023 | BBBY-CA | Abbotsford | 32700 South Fraser Way Unit 65 | Abbotsford | BC | 27,696 |
| 2024 | BBBY-CA | Belleville | 366 North Front Street Unit 25 | Belleville | ON | 22,213 |
| 2025 | BBBY-CA | Kitchener | 225 The Boardwalk Unit #2 | Kitchener | ON | 24,845 |
| 2026 | BBBY-CA | Stittsville | 5487 Hazeldean Road Unit 2 | Stittsville | ON | 25,000 |
| 2027 | BBBY-CA | Kelowna | 1540 Keehn Road | Kelowna | BC | 30,000 |
| 2028 | BBBY-CA | Kamloops | 300-500 Notre Dame Dr. | Kamloops | BC | 25,000 |
| 2029 | BBBY-CA | Fredericton | 15 Trinity Ave. Building C | Fredericton | NB | 20,000 |
| 2030 | BBBY-CA | Sherwood Park | 5000 Emerald Drive Unit 305 | Sherwood Park | AB | 23,900 |
| 2031 | BBBY-CA | St. John's | 430 Topsail Road | St. John's | NL | 30,605 |
| 2033 | BBBY-CA | Victoria | 775 Finlayson Street | Victoria | BC | 27,269 |
| 2034 | BBBY-CA | Markham | 3995 Highway #7 East | Markham | ON | 28,410 |
| 2035 | BBBY-CA | London | 3165 Wonderland Road South Unit #1 | London | ON | 25,100 |
| 2036 | BBBY-CA | Moncton | 79 Wyse Street Unit 300 | Moncton | NB | 23,400 |
| 2037 | BBBY-CA | Grande Prairie | 101-11517 Westgate Drive | Grande Prairie | AB | 25,000 |
| 2038 | BBBY-CA | Toronto | 1602 The Queensway | Toronto | ON | 28,364 |
| 2039 | BBBY-CA | Brantford | 3-221 Henry Street Brantford Bell Centre | Brantford | ON | 20,314 |
| 2040 | BBBY-CA | Winnipeg | 140 - 600 Empress Street | Winnipeg | MB | 28,154 |
| 2041 | BBBY-CA | Richmond | 4751 McClelland Road Unit #2220 | Richmond | BC | 27,064 |
| 2042 | BBBY-CA | Collingwood | Collingwood Centre 55 Mountain Road, Unit 3 | Collingwood | ON | 18,537 |
| 2043 | BBBY-CA | Regina | 4855 Gordon Road | Regina | SK | 27,978 |
| 2044 | BBBY-CA | Burnaby | 6200 McKay Avenue, Unit 240 | Burnaby | BC | 30,000 |
| 2045 | BBBY-CA | Stoney Creek | 1783 Stone Church Road East, Unit 2 | Stoney Creek | ON | 24,430 |
| 2046 | BBBY-CA | Lethbridge | #10-3829 Mayor Magrath Drive South | Lethbridge | AB | 22,000 |
| 2047 | BBBY-CA | Calgary | #40, 145 East Hills Blvd., SE | Calgary | AB | 25,154 |
| 2048 | BBBY-CA | Kingston | 616 Gardiners Road, Suite 1 | Kingston | ON | 22,281 |
| 2049 | BBBY-CA | WOODBIDGE | 67 Colossus Drive, Unit D20 Box 148 | Woodbridge | ON | 28,174 |
| 2050 | BBBY-CA | Langley | Unit 100 - 19860 Langley Bypass | Langley | BC | 30,000 |
| 2051 | BBBY-CA | VANCOUVER | 1740 West Broadway | Vancouver | BC | 38,126 |
| 2052 | BBBY-CA | Halifax | 208 Chain Lake Drive | Halifax | NS | 35,635 |
| 2053 | BBBY-CA | Saskatoon | 110, 1709 Preston Avenue North | Saskatoon | SK | 25,904 |
| 2054 | BBBY-CA | Medicine Hat | 107-1820 Strachan Road | Medicine Hat | AB | 19,967 |
| 2056 | BBBY-CA | Sudbury | 1499 Marcus Dr Unit B2 | Sudbury | ON | 22,000 |
| 2057 | BBBY-CA | Calgary (South) | 60 Shawville Rd SE | Calgary | AB | 24,779 |
| 3701 | BABY-CA | South Edmonton | 2017 98th St NW | Edmonton | AB | 24,870 |
| 3702 | BABY-CA | Whitby | 1650 Victoria St E | Whitby | ON | 19,968 |
| 3703 | BABY-CA | Vaughan | 67 Colossus Dr | Woodbridge | ON | 22,434 |
| 3704 | BABY-CA | Langley | 19860 Langley Bypass | Langley | BC | 20,165 |
| 3705 | BABY-CA | Ottawa Trainyards | 595 industrial Ave | Ottawa | ON | 23,519 |
| 3706 | BABY-CA | West Edmonton | 8882 170 St | Edmonton | AB | 23,982 |
| 3707 | BABY-CA | Winnipeg | 880 St James St | Winnipeg | MB | 17,669 |
| 3708 | BABY-CA | London | 3325 Wonderland Rd | London | ON | 20,000 |
| 3709 | BABY-CA | Calgary (NW) | 3630 Brentwood Rd | Calgary | AB | 20,650 |

Bed Bath & Beyond.2023.Canada
Exhibit A

Store List

| Store # | Concept/Banner | Name | Address | City | State | Selling Sq. Ft. |
|---------|----------------|-----------------|--------------------|----------|-------|-----------------|
| 3711 | BABY-CA | Oakville | 240 Leighland Ave | Oakville | ON | 20,000 |
| 3712 | BABY-CA | Calgary (South) | 133 Walden Mews SE | Ca;gary | AB | 16,441 |
| 65 | | | | | | 26,103 |

Exhibit 1B
List of Warehouse(s)

2975 Argentia Road
Misissauga, ON

Exhibit “B”

Sale Guidelines

SALE GUIDELINES

The following procedures shall apply to any Sale to be held at Bed Bath & Beyond Canada L.P.'s ("**Merchant**") retail stores (collectively, the "**Stores**").

Terms capitalized but not defined in these Sale Guidelines have the meanings ascribed to them in the initial order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") granted on February 10, 2023 in the CCAA Proceedings (as may be amended and restated from time to time, the "**Initial Order**"), or the Consulting Agreement (as defined below), as applicable.

1. Except as otherwise expressly set out herein, and subject to: (i) the Order of the Court granted on February [], 2023 in the CCAA Proceedings (the "**Approval Order**"), approving the Consulting Agreement between a contractual joint venture comprised of Hilco Merchant Retail Solutions, ULC, Gordon Brothers Canada ULC, Tiger Asset Solutions, ULC, and B. Riley Retail Canada, ULC (collectively, "**Consultant**") and Merchant, dated February 14, 2023 (the "**Consulting Agreement**") and the transactions contemplated thereunder, (ii) any further Order of the Court, or (iii) any subsequent written agreement between Merchant and its applicable landlord(s) (individually, a "**Landlord**" and, collectively, the "**Landlords**") and approved by Consultant, the Sale shall be conducted in accordance with the terms of the applicable leases/or other occupancy agreements for each of the affected Stores (individually, a "**Lease**" and, collectively, the "**Leases**"). However, nothing contained herein shall be construed so as to create or impose upon Merchant or Consultant any additional restrictions not contained in the applicable Lease.
2. The Sale shall be conducted so that each of the Stores remain open during their normal hours of operation provided for in the respective Leases for the Stores until the applicable premises vacate date for each Store under the Consulting Agreement (the "**Vacate Date**"), and in all cases no later than the Sale Termination Date. Rent payable under the respective Leases shall be paid as provided in the Initial Order.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws and regulations, unless otherwise set out herein or ordered by the Court.
4. All display and hanging signs used by Consultant in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, Consultant may advertise the Sale at the Stores as a "everything on sale", "everything must go", "store closing" or similar theme sale at the Stores (provided, however, that no signs shall advertise the Sale as a "bankruptcy", a "liquidation" or a "going out of business" sale, it being understood that the French equivalent of "clearance" is "liquidation" and is permitted to be used). Forthwith upon request from a Landlord, the Landlord's counsel, Merchant or the Monitor, Consultant shall provide the proposed signage packages along with proposed dimensions by email or facsimile to the applicable Landlords or to their counsel of record and the applicable Landlord shall notify Consultant of any requirement for such signage to otherwise comply with the terms of the Lease and/or the Sale Guidelines and where the provisions of the Lease conflicts with these Sale Guidelines, these Sale Guidelines shall govern. Consultant shall not use neon or day-glow signs or any handwritten signage (save that handwritten "you pay" or "topper" signs may be used). If a Landlord is concerned with "Store Closing" signs being placed in the front window of a Store or with the number or size of the signs in the front window, Merchant, Consultant and the Landlord will work together to resolve the dispute. Furthermore, with respect to enclosed mall Store locations without a separate entrance from the exterior of the enclosed mall, no exterior signs or signs in common areas of a mall shall be used unless explicitly permitted by the applicable Lease. In addition, Consultant shall be permitted to utilize exterior banners/signs at stand alone or strip mall Stores or enclosed mall Store locations with a separate entrance from the exterior of the enclosed mall; provided, however, that: (i) no signage in any other common areas of a mall shall be used; and (ii) where such banners are not explicitly

- permitted by the applicable Lease and the Landlord requests in writing that banners are not to be used, no banners shall be used absent further Order of the Court, which may be sought on an expedited basis on notice to the Service List. Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the facade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of Consultant.
5. Consultant shall be permitted to utilize sign-walkers and street signage; provided, however, such sign-walkers and street signage shall not be located on the shopping centre or mall premises.
 6. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are “final” and customers with any questions or complaints are to call Merchant’s hotline number.
 7. Consultant shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on Landlord’s property, unless explicitly permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, Consultant may solicit customers in the Stores themselves. Consultant shall not use any giant balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as explicitly permitted under the applicable Lease or agreed to by the Landlord, and no advertising trucks shall be used on Landlord property or mall ring roads, except as explicitly permitted under the applicable Lease or agreed to by the Landlord.
 8. At the conclusion of the Sale in each Store, Consultant shall arrange that the premises for each Store are in “broom-swept” and clean condition, and shall arrange that the Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than Merchant FF&E (as defined below) for clarity) may be removed without the applicable Landlord’s written consent unless otherwise provided by the applicable Lease and in accordance with the Initial Order and the Approval Order. Any trade fixtures or personal property left in a Store after the applicable Vacate Date in respect of which the applicable Lease has been disclaimed by Merchant shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord. Nothing in this paragraph shall derogate from or expand upon Consultant’s obligations under the Consulting Agreement.
 9. Subject to the terms of paragraph 8 above, Consultant may sell furniture, fixtures and equipment owned by Merchant (“**Merchant FF&E**”) and located in the Stores during the Sale. For greater certainty, Merchant FF&E does not include any portion of the Stores’ HVAC system, fire suppression system and fire alarm or sprinkler system. Merchant and Consultant may advertise the sale of Merchant FF&E consistent with these Sale Guidelines on the understanding that the Landlord may require such signs to be placed in discreet locations within the Stores reasonably acceptable to the Landlord. Additionally, the purchasers of any Merchant FF&E sold during the Sale shall only be permitted to remove such Merchant FF&E either through the back shipping areas designated by the Landlord or through other areas after regular Store business hours or, through the front door of the Store during Store business hours if Merchant FF&E can fit in a shopping bag, with the Landlord’s supervision as required by the Landlord and in accordance with the Initial Order and the Approval Order. Consultant shall repair any damage to the Stores resulting from the removal of any Merchant FF&E by Consultant or by third party purchasers of Merchant FF&E from Consultant.
 10. Consultant shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the affected Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these Sale Guidelines, shall not constitute an alteration to a Store.

11. Merchant hereby provides notice to the Landlords of Merchant and Consultant's intention to sell and remove Merchant FF&E from the Stores. Consultant shall make commercially reasonable efforts to arrange with each Landlord represented by counsel on the Service List and with any other Landlord that so requests, a walk-through with Consultant to identify Merchant FF&E subject to the Sale. The relevant Landlord shall be entitled to have a representative present in the applicable Stores to observe such removal. If the Landlord disputes Consultant's entitlement to sell or remove any Merchant FF&E under the provisions of the Lease, such Merchant FF&E shall remain on the premises and shall be dealt with as agreed between Merchant, Consultant and such Landlord, or by further Order of the Court upon application by Merchant on at least two (2) days' notice to such Landlord and the Monitor. If Merchant has disclaimed or resiliated the Lease governing such Store in accordance with the CCAA and the Initial Order, it 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 the CCAA and the Initial Order), and the disclaimer or resiliation of the Lease shall be without prejudice to Merchant's or Consultant's claim to Merchant FF&E in dispute.
12. If a notice of disclaimer or resiliation is delivered pursuant to the CCAA and the Initial Order to a Landlord while the Sale is ongoing and the Store in question has not yet been vacated, then: (i) during the notice period prior to the effective time of the disclaimer or resiliation, the Landlord may show the affected leased premises to prospective tenants during normal business hours, on giving Merchant, the Monitor and Consultant twenty-four (24) hours' prior written notice; and (ii) at the effective time of the disclaimer or resiliation, the relevant Landlord shall be entitled to take possession of any such Store without waiver of or prejudice to any claims or rights such Landlord may have against Merchant in respect of such Lease or Store, provided that nothing herein shall relieve such Landlord of any obligation to mitigate any damages claimed in connection therewith.
13. Consultant and its agents and representatives shall have the same access rights to the Stores as Merchant under the terms of the applicable Lease, and the Landlords shall have the rights of access to the Stores during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings and the terms of the Initial Order).
14. Merchant and Consultant shall not conduct any auctions of Merchandise or Merchant FF&E at any of the Stores.
15. Consultant shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for Consultant shall be Steven E. Fox, Esq., Riemer & Braunstein LLP, times Square Tower, Seven Times Square, Suite 2506, New York, NY 10036, who may be reached by phone at 212.789.3150 or email at sfox@riemerlaw.com. If the parties are unable to resolve the dispute between themselves, the Landlord or Merchant shall have the right to schedule a "status hearing" before the Court on no less than two (2) days' written notice to the other party or parties and the Monitor, during which time Consultant shall cease all activity in dispute other than activity expressly permitted herein, pending determination of the matter by the Court; provided, however, subject to paragraph 4 of these Sale Guidelines, if a banner has been hung in accordance with these Sale Guidelines and is the subject of a dispute, Consultant shall not be required to take any such banner down pending determination of any dispute.
16. Consultant shall be entitled, as agent for Merchant pursuant to and in accordance with the Consulting Agreement, to include in the Sale additional inventory and other goods from similar vendors not currently supplying goods to Merchant ("**Additional Consultant Goods**") to the extent permitted under the Consulting Agreement, provided that (i) the Additional Consultant Goods sold as part of the Sale will not exceed \$15,000,000 at cost in the aggregate; (ii) the Additional Consultant Goods are of like kind and category and no lesser quality to the Merchandise, and consistent with any restriction on usage of the Stores set out in the applicable Leases; (iii) the Additional Consultant Goods will be distributed amongst the Stores such that no Store receives Additional Consultant Goods aggregating

more than 10% (determined by measuring the cost of such goods relative to the total retail value of the Merchandise).

17. Nothing herein or in the Consulting Agreement is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or shall, or shall be deemed to, or grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.
18. These Sale Guidelines may be amended by written agreement between Consultant, Merchant and the applicable Landlord, in consultation with the Monitor; provided, however, that such amended Sale Guidelines shall not affect or bind any other Landlord not privy thereto without further Order of the Court approving such amended Sale Guidelines.

Exhibit “C”

Expense Budget

For purposes of calculating “Net Recovery”, (1) “Costs” of the Sale shall mean those Store-level operating expenses directly attributable to and which arise during the Sale Term, limited to the following: (a) actual Occupancy Expenses for the Stores on a per location and per diem basis, plus the portion of any percentage rent obligations allocable to the sale of Merchandise and Additional Consultant Goods during the Sale; (b) actual wages and commissions for all Store-level employees used in conducting the Sale for actual days/hours worked during the Sale Term; (c) amounts payable by Merchant for benefits for Store-level employees used in conducting the Sale (including payroll taxes, FICA, unemployment taxes, workers’ compensation and health care insurance benefits); (d) all costs and expenses associated with Consultant’s on-site supervisors; (e) all costs and expenses associated with advertising of the Sale, including banners, sign-walkers, and interior and exterior signs that are produced for the Sale, other promotional costs including, without limitation, email blasts, digital advertising, television, ROP, other advertising and direct mail attributable to the Sale and ordered or requested by Consultant; (f) postage/overnight delivery/courier charges to and from or among the Stores to the extent relating to the Sale; (g) credit card and bank card fees, chargebacks, and discounts relating to the Sale; (h) any and all costs of moving, transferring, or consolidating Merchandise between the Stores; (i) a pro rata portion for the Sale Term of Merchant’s premiums in respect of general liability, casualty, property, inventory, and other insurance policies attributable to the Merchandise, the Stores and the Distribution Centers; (j) third-party payroll processing fees associated with the Sale; (k) armored car service and security personnel; (l) the Base Fee payable by Merchant to Consultant; and (m) Consultant’s (i) actual cost of capital, (ii) reasonable legal fees and expenses attributable to the Sale Term, and (iii) bank fees and wire charges; and (2) “Costs” of the Sale shall exclude “Central Service Expenses” and “Distribution Center Expenses”.

As used herein, the following terms have the following meanings:

“Central Service Expenses” means costs and expenses for Merchant’s Central Services.

“Central Services” means those Merchant central administrative services necessary for the conduct and support of the Sale, including, but not limited to, use or and access to Merchant’s: (i) inventory control system, (ii) payroll system, (iii) accounting system, (iv) office facilities, (v) MIS and POS services, (vi) cash and inventory reconciliation, (vii) central administrative services and personnel to process and perform sales audit, banking, and other normal course administrative services customarily provided to or for the benefit of operating the Stores and Distribution Centers and including data processing and reporting, email preparation and distribution, information technology and e-commerce platform updates, functionality, and maintenance, (viii) such other central office services reasonably necessary (in the reasonable judgment of the Consultant) for the Sale, and (vii) to use reasonably sized offices located at Merchant’s central office facility to effect the Sale.

“Distribution Center Expenses” means the actual costs and expenses, including use and Occupancy Expenses and Distribution Center employee payroll and other obligations, of the operations of the Distribution Centers, and the actual costs and expenses (including outbound freight) related to the processing, transfer, and consolidation of Merchandise and supplies in the Distribution Centers and from the Distribution Centers to the Stores.

“Occupancy Expenses” means rent, percentage rent, common-area maintenance, landlord promotional fees, real estate and use taxes, merchant association dues and charges, HVAC, utilities, telecom/telephone charges, point-of-sale systems maintenance, store security systems, routine repairs and maintenance, taxes and licenses, costs of all local, long-distance, and international telephone, satellite broadband connections, T-1 lines, broadband internet, and other telecommunications services, trash removal (to the extent excluded as a fixed charge component of lease obligation), snow removal, and ordinary course third-party cleanings, and pest control services.

THIS IS **CONFIDENTIAL EXHIBIT “G”** REFERRED TO IN THE
AFFIDAVIT OF HOLLY ETLIN SWORN BEFORE ME over video
teleconference this 15th day of February, 2023 pursuant to O. Reg
431/20, Administering Oath or Declaration Remotely. The affiant was
located in the City of New York, in the State of New York while the
Commissioner was located in the City of Toronto, in the Province of
Ontario.



Commissioner for Taking Affidavits
Viktor Nikolov (LSO No. 84503P)

CONFIDENTIAL EXHIBIT “G”

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

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

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

Applicants

**Ontario
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at: Toronto

AFFIDAVIT OF HOLLY ETLIN

OSLER, HOSKIN & HARCOURT LLP
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Emily Paplawski (LSA# 17693)

Tel: (416) 362-2111
Fax: (416) 862-6666

Lawyers for the Applicant

TAB 3

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

| | | |
|------------------------|---|-------------------------------|
| THE HONOURABLE |) | TUESDAY, THE 21 ST |
| |) | |
| CHIEF JUSTICE MORAWETZ |) | DAY OF FEBRUARY, 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**")

**AMENDED AND RESTATED INITIAL ORDER
(amending the Initial Order dated February 10, 2023)**

THIS APPLICATION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), was heard this day via videoconference.

ON READING the affidavit of Holly Etlin sworn February 9, 2023 and the Exhibits thereto (the "**Etlin Affidavit**"), the affidavit of Holly Etlin sworn February 15, 2023 and the exhibits thereto (the "**Second Etlin Affidavit**"), the pre-filing report dated February 10, 2023 of the proposed monitor, Alvarez & Marsal Canada Inc. ("**A&M**"), and the first report of A&M in its capacity as Court-appointed monitor (in such capacity, the "**Monitor**"), dated February 9, 2023, and on hearing the submissions of counsel for the Applicant and Bed Bath & Beyond Canada L.P. ("**BBB L.P.**", and together with the Applicant, the "**BBB Entities**"), A&M, and such other counsel who were present, and on reading the consent of A&M to act as the Monitor,

SERVICE

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

DEFINED TERMS

2. **THIS COURT ORDERS** that capitalized terms that are used in this Order shall have the meanings ascribed to them in the Etlin Affidavit and the Second Etlin Affidavit, as applicable, if they are not otherwise defined herein.

APPLICATION

3. **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies. Although not an Applicant, BBB L.P. shall enjoy the benefits of the protections and authorizations provided by this Order.

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the BBB Entities shall remain in possession and control of their respective current and future assets, licenses, 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 and the Orderly Wind-down (as hereinafter defined), the BBB Entities shall continue to carry on business in a manner consistent with the preservation of their business (the “**Business**”) and Property. The BBB Entities shall each be authorized and empowered to continue to retain and employ the employees, contractors, consultants, agents, advisors, 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 BBB Entities shall be entitled to continue to utilize the central cash management system currently in place as described in the Etlin Affidavit or, with the consent of the Monitor, 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 (each, a “**Cash Management Bank**”) 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 BBB Entities 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 BBB Entities, 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 any plan of compromise or arrangement that may be filed (hereinafter referred to as the “**Plan**”) with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System. During the Stay Period (as hereinafter defined), no Cash Management Bank shall, without leave of this Court, exercise any sweep remedy under any applicable documentation, subject to paragraph 14 of this Order.

6. **THIS COURT ORDERS** that the BBB Entities shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable prior to, 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) all outstanding or future amounts owing in respect of existing return policies and refunds;
- (c) until and including March 9, 2023, all outstanding amounts related to honouring existing gift cards issued before or on the date of this Order, discounts, or other amounts on account of customer programs or obligations existing before or on the date of this Order;
- (d) the fees and disbursements of any Assistants retained or employed by the BBB Entities in respect of these proceedings, at their standard rates and charges; and
- (e) with the consent of the Monitor, amounts owing for goods or services actually supplied to the BBB Entities prior to the date of this Order by:

- (i) providers of payroll services;
- (ii) providers of credit, debit and gift card processing related services; and
- (iii) other third party suppliers up to a maximum amount of \$500,000, if, in the opinion of the BBB Entities, the supplier is critical to the Orderly Wind-down.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the BBB Entities shall be entitled but not required to pay all reasonable expenses incurred by the BBB Entities 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 BBB Entities following the date of this Order.

8. **THIS COURT ORDERS** that the BBB Entities 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, and (iii) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the BBB Entities in connection with the sale of goods and services by the BBB Entities, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order;

- (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 any of the BBB Entities; and
- (d) taxes under the *Income Tax Act* (Canada) or other relevant taxing statute giving rise to any statutory deemed trust amounts in favour of the Crown in right of Canada or any Province thereof or any political subdivision thereof or any other taxation authority.

9. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the BBB Entities 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, but for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of any of the BBB Entities, the making of this Order or the commencement of any insolvency proceeding) or as otherwise may be negotiated between the applicable BBB Entity and the landlord from time to time (“**Rent**”) for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. **THIS COURT ORDERS** that, except as specifically permitted herein, the BBB Entities 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 any of the BBB Entities to any of their respective creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business for the purpose of the Orderly Wind-down or pursuant to this Order or any other Order of this Court.

ORDERLY WIND-DOWN

11. **THIS COURT ORDERS** that the BBB Entities shall, subject to such requirements as are imposed by the CCAA or as otherwise ordered by this Court, 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 \$500,000 in any one transaction or \$2,500,000 in the aggregate; provided that, with respect to any leased premises, the BBB Entities may, subject to the requirements of the CCAA, vacate, abandon or quit the whole but not part of any leased premises;
- (b) terminate the employment of such of their employees or temporarily lay off such of their employees as the BBB Entities deem appropriate; and
- (c) apply to this Court for such approval, vesting or other Orders as may be necessary to consummate sales transactions for all or any part of the Property,

all of the foregoing to permit the BBB Entities to proceed with an orderly wind-down of the Business (the “**Orderly Wind-down**”).

12. **THIS COURT ORDERS** that the BBB Entities shall provide each of the relevant landlords with notice of the respective BBB Entity’s 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 respective BBB Entity’s 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 respective BBB Entity, or by further Order of this Court upon application by the BBB Entities on at least two (2) days notice to such landlord and any such secured creditors. If the respective BBB Entity disclaims the lease governing such leased premises in accordance with section 32 of the CCAA, it 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 subsection 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the respective BBB Entity’s claim to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the BBB Entities and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, 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 respective BBB Entity in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

PERIODIC REPAYMENTS

14. **THIS COURT ORDERS** that sweep rights pursuant to the Amended Credit Agreement may be exercised with respect to the BBB Entities; provided that (i) any swept funds shall constitute repayment of obligations under, and subject to the terms of, the Amended Credit Agreement, and (ii) such sweep rights may only be exercised if the BBB Entities will continue to hold cash in the amount of at least \$9,500,000 (the "**Minimum Balance**") immediately after the applicable sweep; provided, however, that: (i) the Minimum Balance shall be reduced to \$6,000,000 effective March 27, 2023; and (ii) the Minimum Balance may be further decreased by the BBB Entities with the consent of the Monitor.

STAY OF PROCEEDINGS

15. **THIS COURT ORDERS** that until and including May 1, 2023 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 any of the BBB Entities or the Monitor, or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the prior written consent of the BBB Entities and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the BBB Entities, or their employees or representatives acting in such capacities, or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court or the prior written consent of the BBB Entities and the Monitor.

16. **THIS COURT ORDERS** that until and including May 1, 2023, no Proceeding shall be commenced or continued against Bed Bath & Beyond Inc. (“**BBBI**”) arising out of or in connection with any indemnity, guarantee, or surety relating to a lease of real property by a BBB Entity without the consent of the BBB Entities and the Monitor or with leave of this Court; provided, however, that, without in any way altering, increasing, creating or eliminating any obligation or duty to mitigate losses or damages of any landlord of any BBB Entity (each, a “**Landlord**”), any Landlord claim pursuant to a guarantee in relation to any BBB Entity shall be unaffected and shall not be released or affected in any way in any Plan filed by the Applicant under the CCAA, or any proposal filed by the BBB Entities under the *Bankruptcy and Insolvency Act* (Canada) (“**BIA**”).

17. **THIS COURT ORDERS** that, to the extent any prescription, time or limitation period relating to any Proceeding against or in respect of the BBB Entities that is stayed pursuant to this Order may expire, the term of such prescription, time or limitation period shall hereby be deemed to be extended by a period equal to the Stay Period.

NO EXERCISE OF RIGHTS OR REMEDIES

18. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, organization, governmental unit, body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the BBB Entities or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the BBB Entities and the Monitor, or leave of this Court, provided that nothing in this Order shall: (i) empower the BBB Entities to carry on any business which the BBB Entities are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by section 11.1 of the CCAA, (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

19. **THIS COURT ORDERS** that during the Stay Period, no Person shall accelerate, discontinue, fail to honour, alter, interfere with, repudiate, rescind, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence or permit in favour of or held

by the BBB Entities, except with the written consent of the BBB Entities and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

20. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with any BBB Entity or statutory or regulatory mandates for the supply or license of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, cash management services, payroll and benefit services, insurance, freight services, transportation services, customs clearing, warehouse and logistics services, security services, management services, merchandise sourcing services, procurement services, utility or other services to the BBB Entities or the Business, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply or license of such goods or services, trademarks and other intellectual property as may be required by the BBB Entities, and that the BBB Entities 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 BBB Entities in accordance with normal payment practices of the BBB Entities or such other practices as may be agreed upon by the supplier or service provider and the applicable BBB Entity and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

21. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to any of the BBB Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

WAGE EARNER PROTECTION PROGRAM ACT

22. **THIS COURT ORDERS AND DECLARES** that pursuant to subsections 5(1)(b)(iv) and 5(5) of the *Wage Earner Protection Program Act* (Canada), S.C. 2005, c. 47, s. 1 (“**WEPPA**”),

the BBB Entities meet the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 and the BBB Entities' former employees are eligible to receive payments under and in accordance with the WEPPA following the termination of their employment.

APPROVAL OF KEY EMPLOYEE RETENTION PLAN

23. **THIS COURT ORDERS** that the Key Employee Retention Plan (the “**KERP**”), as described in the Second Etlin Affidavit and attached as Confidential Appendix “G” thereto, is hereby approved and the BBB Entities are authorized to make payments contemplated thereunder in accordance with the terms and conditions of the KERP.

24. **THIS COURT ORDERS** that the key employees referred to in the KERP (the “**Key Employees**”) shall be entitled to the benefit of and are hereby granted a charge on the Property (the “**KERP Charge**”), which charge shall not exceed the aggregate amount of \$161,000, to secure any payments to the Key Employees under the KERP. The KERP Charge shall have the priority set out in paragraphs 38 and 40 herein.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

25. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the BBB Entities with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the BBB Entities 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 BBB Entities, if one is filed, is sanctioned by this Court or is refused by the creditors of the BBB Entities or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

26. **THIS COURT ORDERS** that the BBB Entities shall indemnify their respective directors and officers against obligations and liabilities that they may incur as directors or officers of the BBB Entities after the commencement of the within proceedings, except to the extent that, with

respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

27. **THIS COURT ORDERS** that the directors and officers of the BBB Entities 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 \$8,250,000, unless permitted by further Order of this Court, as security for the indemnity provided in paragraph 26 of this Order. The Directors' Charge shall have the priority set out in paragraphs 38-40 herein.

28. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (i) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (ii) the BBB Entities' 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 26 of this Order.

APPOINTMENT OF MONITOR

29. **THIS COURT ORDERS** that A&M is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the BBB Entities with the powers and obligations set out in the CCAA or set forth herein and that the BBB Entities and their shareholders or partners (as applicable), officers, directors, and Assistants shall advise the Monitor of all material steps taken by the BBB Entities pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

30. **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 BBB Entities' receipts and disbursements;
- (b) liaise with Assistants, to the extent required, with respect to all matters relating to the Property, the Business, the Orderly Wind-down, and such other matters as may be relevant to the proceedings herein;

- (c) 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, the Orderly Wind-down, and such other matters as may be relevant to the proceedings herein;
- (d) monitor the Minimum Balance and the exercise of any sweep rights pursuant to the Amended Credit Agreement permitted under paragraph 14 of this Order;
- (e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the BBB Entities, wherever located and to the extent that is necessary to adequately assess the BBB Entities' business and financial affairs or to perform its duties arising under this Order;
- (f) oversee and consult with the BBB Entities, any liquidation agents that are approved by this Court, and any Assistants retained, to the extent required, with respect to the Orderly Wind-Down;
- (g) assist each of the BBB Entities with respect to any foreign proceeding and monitor and report to this Court, as it deems appropriate on any such foreign proceeding;
- (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; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

31. **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.

32. **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.

33. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the BBB Entities with information provided by the BBB Entities in response to reasonable requests for information made in writing by such creditor 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 BBB Entities 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 BBB Entities may agree.

34. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, neither the Monitor nor its employees and representatives acting in such capacities shall incur any liability or obligation as a result of the Monitor’s appointment or the carrying out by it 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.

35. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the BBB Entities shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on, or subsequent to the date of this Order, by the BBB Entities as part of the costs of these proceedings. The BBB Entities are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor, and the BBB Entities’ counsel on a weekly basis and, in addition, the BBB Entities are hereby authorized to pay to the Monitor, counsel to the Monitor and counsel to the BBB Entities, retainers, *nunc pro tunc*, to be held by

them as security for payment of their respective fees and disbursements outstanding from time to time.

36. **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.

ADMINISTRATION CHARGE

37. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and counsel to the BBB Entities 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 \$1,250,000 unless permitted by further Order of this Court, as security for their professional fees and disbursements incurred at their standard rates and charges, 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 38 and 40 herein.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

38. **THIS COURT ORDERS** that the priorities of the Administration Charge, the Directors’ Charge, and the KERP Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$1,250,000);

Second – Directors’ Charge (to the maximum amount of \$8,250,000) and

Third – KERP Charge (to the maximum amount of \$161,000),

39. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge, the Directors’ Charge or the KERP Charge (together, 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.

40. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges

and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person notwithstanding the order of perfection or attachment.

41. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court on notice to parties in interest, the BBB Entities shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges unless the BBB Entities also obtain the prior written consent of the Monitor and the beneficiaries of the Charges, or further Order of this Court.

42. **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**”) thereunder 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 the 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 document, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds any of the BBB Entities and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by any BBB Entity of any Agreement to which it is 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; and
- (c) the payments made by the BBB Entities pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

43. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the BBB Entities’ interest in such real property leases.

SERVICE AND NOTICE

44. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in *The Globe and Mail* (National Edition) a notice containing the information prescribed under the CCAA, and (ii) within five (5) days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, or cause to be sent, in the prescribed manner or by electronic message to the e-mail addresses as last shown on the records of the BBB Entities, a notice to every known creditor who has a claim against the BBB Entities of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with subsection 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of the individuals who are creditors publicly available.

45. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the “**Service List**”). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor’s Website (as hereinafter defined) as part of the public materials to be recorded thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

46. **THIS COURT ORDERS** that any employee of either of the BBB Entities that receives a notice of termination from either of the BBB Entities shall be deemed to have received such notice of termination by no more than the third day following the date such notice of termination is delivered, if such notice of termination is sent by email, ordinary mail, expedited parcel, registered mail.

47. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Protocol, service of

documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: www.alvarezandmarsal.com/BBBCanada (the “**Monitor’s Website**”).

48. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol or the CCAA and the regulations thereunder is not practicable (including as a result of COVID-19), the BBB Entities, the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or electronic message to the BBB Entities’ creditors or other interested parties at their respective addresses (including e-mail addresses) as last shown in the books and records of the BBB Entities and that any such service, distribution or notice shall be deemed to be received on the earlier of (a) the date of forwarding thereof, if sent by electronic message on or prior to 5:00 p.m. Eastern Standard/Daylight Time (or on the next business day following the date of forwarding thereof if sent on a non-business day); (b) the next business day following the date of forwarding thereof, if sent by courier, personal delivery, facsimile transmission or electronic message sent after 5:00 p.m. Eastern Standard/Daylight Time; or (c) on the third business day following the date of forwarding thereof, if sent by ordinary mail.

49. **THIS COURT ORDERS** that the BBB Entities, the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile or other electronic transmission to the BBB Entities’ creditors or other interested parties and their advisors and that any such service, distribution or notice shall be deemed to be received: (a) if sent by courier, on the next business day following the date of forwarding thereof; (b) if delivered by personal delivery or facsimile or other electronic transmission, on the day so delivered; and (c) if sent by ordinary mail, on the third business day after mailing. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, (SOR/2013-221).

GENERAL

50. **THIS COURT ORDERS** that the BBB Entities or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their powers and duties under this Order or in the interpretation or application of this Order.

51. **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 any of the BBB Entities, the Business or the Property.

52. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body or agency having jurisdiction in Canada or in the United States, 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 and agencies 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, or to assist the BBB Entities and the Monitor and their respective agents in carrying out the terms of this Order.

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

54. **THIS COURT ORDERS** that Confidential Exhibit “G” to the Second Etlin Affidavit shall be and is hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

55. **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 without the need for entry or filing.

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

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

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

AMENDED & RESTATED INITIAL ORDER

OSLER, HOSKIN & HARCOURT, LLP

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Lawyers for the Applicant

TAB 4

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

| | | |
|------------------------|---|---|
| THE HONOURABLE |) | FRIDAY <u>TUESDAY</u> , THE <u>21ST</u> |
| |) | |
| CHIEF JUSTICE MORAWETZ |) | DAY OF FEBRUARY, 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**")

AMENDED AND RESTATED INITIAL ORDER
(amending the Initial Order dated February 10, 2023)

THIS APPLICATION, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), was heard this day via videoconference.

ON READING the affidavit of Holly Etlin sworn February 9, 2023 and the Exhibits thereto (the "**Etlin Affidavit**"), the affidavit of Holly Etlin sworn February 15, 2023 and the exhibits thereto (the "**Second Etlin Affidavit**"), the pre-filing report dated February 10, 2023 of the proposed monitor, Alvarez & Marsal Canada Inc. ("**A&M**"), and the first report of A&M in its capacity as Court-appointed monitor (in such capacity, the "**Monitor**"), dated February ~~10~~¹⁵, 2023, and on hearing the submissions of counsel for the Applicant and Bed Bath & Beyond Canada L.P. ("**BBB L.P.**", and together with the Applicant, the "**BBB Entities**"), A&M, and such other counsel who were present, and on reading the consent of A&M to act as the ~~Court-appointed monitor of the BBB Entities (in such capacity, the "**Monitor**")~~Monitor,

SERVICE

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

DEFINED TERMS

2. **THIS COURT ORDERS** that capitalized terms that are used in this Order shall have the meanings ascribed to them in the Etlin Affidavit [and the Second Etlin Affidavit, as applicable](#), if they are not otherwise defined herein.

APPLICATION

3. **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies. Although not an Applicant, BBB L.P. shall enjoy the benefits of the protections and authorizations provided by this Order.

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the BBB Entities shall remain in possession and control of their respective current and future assets, licenses, 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 and the Orderly Wind-down (as hereinafter defined), the BBB Entities shall continue to carry on business in a manner consistent with the preservation of their business (the “**Business**”) and Property. The BBB Entities shall each be authorized and empowered to continue to retain and employ the employees, contractors, consultants, agents, advisors, 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 BBB Entities shall be entitled to continue to utilize the central cash management system currently in place as described in the Etlin Affidavit or, with the consent of the Monitor, 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 (each, a “**Cash Management Bank**”) 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 BBB Entities 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 BBB Entities, 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 any plan of compromise or arrangement that may be filed (hereinafter referred to as the “**Plan**”) with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System. During the Stay Period (as hereinafter defined), no Cash Management Bank shall, without leave of this Court, exercise any sweep remedy under any applicable documentation, subject to paragraph 124 of this Order.

6. **THIS COURT ORDERS** that the BBB Entities shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable prior to, 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) all outstanding or future amounts owing in respect of existing return policies and refunds;
- (c) until and including ~~February 25~~March 9, 2023, all outstanding amounts related to honouring existing gift cards issued before or on the date of this Order, discounts, or other amounts on account of customer programs or obligations existing before or on the date of this Order;
- (d) the fees and disbursements of any Assistants retained or employed by the BBB Entities in respect of these proceedings, at their standard rates and charges; and

- (e) with the consent of the Monitor, amounts owing for goods or services actually supplied to the BBB Entities prior to the date of this Order by:
 - (i) providers of payroll services;
 - (ii) providers of credit, debit and gift card processing related services; and
 - (iii) other third party suppliers up to a maximum amount of \$500,000, if, in the opinion of the BBB Entities, the supplier is critical to the Orderly Wind-down.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the BBB Entities shall be entitled but not required to pay all reasonable expenses incurred by the BBB Entities 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 BBB Entities following the date of this Order.

8. **THIS COURT ORDERS** that the BBB Entities 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, and (iii) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the BBB Entities in connection with the sale of goods and services by the BBB Entities, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or

- collected prior to the date of this Order but not required to be remitted until on or after the date of this Order;
- (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 any of the BBB Entities; and
 - (d) taxes under the *Income Tax Act* (Canada) or other relevant taxing statute giving rise to any statutory deemed trust amounts in favour of the Crown in right of Canada or any Province thereof or any political subdivision thereof or any other taxation authority.

9. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the BBB Entities 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, but for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of any of the BBB Entities, the making of this Order or the commencement of any insolvency proceeding) or as otherwise may be negotiated between the applicable BBB Entity and the landlord from time to time (“**Rent**”) for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. **THIS COURT ORDERS** that, except as specifically permitted herein, the BBB Entities 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 any of the BBB Entities to any of their respective creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business for the purpose of the Orderly Wind-down or pursuant to this Order or any other Order of this Court.

ORDERLY WIND-DOWN

11. **THIS COURT ORDERS** that the BBB Entities shall, subject to such requirements as are imposed by the CCAA or as otherwise ordered by this Court, 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 \$500,000 in any one transaction or \$2,500,000 in the aggregate; provided that, with respect to any leased premises, the BBB Entities may, subject to the requirements of the CCAA, vacate, abandon or quit the whole but not part of any leased premises;
- (b) terminate the employment of such of their employees or temporarily lay off such of their employees as the BBB Entities deem appropriate; and
- (c) apply to this Court for such approval, vesting or other Orders as may be necessary to consummate ~~sales~~sales transactions for all or any part of the Property, ~~including, without limitation, approval of a consulting or liquidation agreement concerning the liquidation of inventory, furniture, fixtures, and equipment forming part of the Property, and any related relief,~~

all of the foregoing to permit the BBB Entities to proceed with an orderly wind-down of the Business (the “**Orderly Wind-down**”).

12. **THIS COURT ORDERS** that the BBB Entities shall provide each of the relevant landlords with notice of the respective BBB Entity’s 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 respective BBB Entity’s 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 respective BBB Entity, or by further Order of this Court upon application by the BBB Entities on at least two (2) days notice to such landlord and any such secured creditors. If the respective BBB Entity disclaims the lease governing such leased premises in accordance with section 32 of the CCAA, it 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 subsection 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the respective BBB Entity's claim to the fixtures in dispute.

13. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the BBB Entities and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, 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 respective BBB Entity in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

PERIODIC REPAYMENTS

14. ~~12.~~ **THIS COURT ORDERS** that sweep rights pursuant to the Amended Credit Agreement may be exercised with respect to the BBB Entities; provided that (i) any swept funds shall constitute repayment of obligations under, and subject to the terms of, the Amended Credit Agreement, and (ii) such sweep rights may only be exercised if the BBB Entities will continue to hold cash in the amount of at least \$~~79~~,500,000 (the "**Minimum Balance**") immediately after the applicable sweep; provided, however, that: (i) the Minimum Balance shall be reduced to \$6,000,000 effective March 27, 2023; and (ii) the Minimum Balance may be further decreased by the BBB Entities with the consent of the Monitor.

STAY OF PROCEEDINGS

15. ~~13.~~ **THIS COURT ORDERS** that until and including ~~February 2~~May 1, 2023 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 any of the BBB Entities or the Monitor, or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the prior written consent of the BBB Entities and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the BBB Entities, or their

employees or representatives acting in such capacities, or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court or the prior written consent of the BBB Entities and the Monitor.

16. ~~14.~~ **THIS COURT ORDERS** that until and including ~~February 2~~May 1, 2023, no Proceeding shall be commenced or continued against Bed Bath & Beyond Inc. (“**BBBI**”) arising out of or in connection with any indemnity, guarantee, or surety relating to a lease of real property by a BBB Entity without the consent of the BBB Entities and the Monitor or with leave of this Court; provided, however, that, without in any way altering, increasing, creating or eliminating any obligation or duty to mitigate losses or damages of any landlord of any BBB Entity (each, a “**Landlord**”), any Landlord claim pursuant to a guarantee in relation to any BBB Entity shall be unaffected and shall not be released or affected in any way in any Plan filed by the Applicant under the CCAA, or any proposal filed by the BBB Entities under the Bankruptcy and Insolvency Act (Canada) (“**BIA**”).

17. ~~15.~~ **THIS COURT ORDERS** that, to the extent any prescription, time or limitation period relating to any Proceeding against or in respect of the BBB Entities that is stayed pursuant to this Order may expire, the term of such prescription, time or limitation period shall hereby be deemed to be extended by a period equal to the Stay Period.

NO EXERCISE OF RIGHTS OR REMEDIES

18. ~~16.~~ **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, organization, governmental unit, body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the BBB Entities or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the BBB Entities and the Monitor, or leave of this Court, provided that nothing in this Order shall: (i) empower the BBB Entities to carry on any business which the BBB Entities are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by section 11.1 of the CCAA, (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

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

CONTINUATION OF SERVICES

20. ~~18.~~ **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with any BBB Entity or statutory or regulatory mandates for the supply or license of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, cash management services, payroll and benefit services, insurance, freight services, transportation services, customs clearing, warehouse and logistics services, security services, management services, merchandise sourcing services, procurement services, utility or other services to the BBB Entities or the Business, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply or license of such goods or services, trademarks and other intellectual property as may be required by the BBB Entities, and that the BBB Entities 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 BBB Entities in accordance with normal payment practices of the BBB Entities or such other practices as may be agreed upon by the supplier or service provider and the applicable BBB Entity and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

21. ~~19.~~ **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to any of the BBB Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

WAGE EARNER PROTECTION PROGRAM ACT

22. THIS COURT ORDERS AND DECLARES that pursuant to subsections 5(1)(b)(iv) and 5(5) of the *Wage Earner Protection Program Act* (Canada), S.C. 2005, c. 47, s. 1 (“WEPPA”), the BBB Entities meet the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 and the BBB Entities’ former employees are eligible to receive payments under and in accordance with the WEPPA following the termination of their employment.

APPROVAL OF KEY EMPLOYEE RETENTION PLAN

23. THIS COURT ORDERS that the Key Employee Retention Plan (the “KERP”), as described in the Second Etlin Affidavit and attached as Confidential Appendix “G” thereto, is hereby approved and the BBB Entities are authorized to make payments contemplated thereunder in accordance with the terms and conditions of the KERP.

24. THIS COURT ORDERS that the key employees referred to in the KERP (the “Key Employees”) shall be entitled to the benefit of and are hereby granted a charge on the Property (the “KERP Charge”), which charge shall not exceed the aggregate amount of \$161,000, to secure any payments to the Key Employees under the KERP. The KERP Charge shall have the priority set out in paragraphs 38 and 40 herein.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

25. ~~20.~~ THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the BBB Entities with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the BBB Entities 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 BBB Entities, if one is filed, is sanctioned by this Court or is refused by the creditors of the BBB Entities or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

26. ~~21.~~ **THIS COURT ORDERS** that the BBB Entities shall indemnify their respective directors and officers against obligations and liabilities that they may incur as directors or officers of the BBB Entities after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

27. ~~22.~~ **THIS COURT ORDERS** that the directors and officers of the BBB Entities 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 \$~~78,250~~78,250,000, unless permitted by further Order of this Court, as security for the indemnity provided in paragraph ~~24~~26 of this Order. The Directors' Charge shall have the priority set out in paragraphs ~~338-354~~338-354 herein.

28. ~~23.~~ **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (i) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (ii) the BBB Entities' 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 ~~24~~26 of this Order.

APPOINTMENT OF MONITOR

29. ~~24.~~ **THIS COURT ORDERS** that A&M is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the BBB Entities with the powers and obligations set out in the CCAA or set forth herein and that the BBB Entities and their shareholders or partners (as applicable), officers, directors, and Assistants shall advise the Monitor of all material steps taken by the BBB Entities pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

30. ~~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 BBB Entities' receipts and disbursements;

- (b) liaise with Assistants, to the extent required, with respect to all matters relating to the Property, the Business, the Orderly Wind-down, and such other matters as may be relevant to the proceedings herein;
- (c) 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, the Orderly Wind-down, and such other matters as may be relevant to the proceedings herein;
- (d) monitor the Minimum Balance and the exercise of any sweep rights pursuant to the Amended Credit Agreement permitted under paragraph 14 of this Order;
- (e) ~~(d)~~ have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the BBB Entities, wherever located and to the extent that is necessary to adequately assess the BBB Entities' business and financial affairs or to perform its duties arising under this Order;
- (f) ~~(e)~~ oversee and consult with the BBB Entities, any liquidation ~~agent~~agents that ~~is~~are approved by this Court, and any Assistants retained, to the extent required, with respect to the Orderly Wind-Down;
- (g) ~~(f)~~ assist each of the BBB Entities with respect to any foreign proceeding and monitor and report to this Court, as it deems appropriate on any such foreign proceeding;
- (h) ~~(g)~~ 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; and
- (i) ~~(h)~~ perform such other duties as are required by this Order or by this Court from time to time.

31. ~~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.

32. ~~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.

33. ~~28.~~ **THIS COURT ORDERS** that the Monitor shall provide any creditor of the BBB Entities with information provided by the BBB Entities in response to reasonable requests for information made in writing by such creditor 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 BBB Entities 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 BBB Entities may agree.

34. ~~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, neither the Monitor nor its employees and representatives acting in such capacities shall incur any liability or obligation as a result of the Monitor’s appointment or the carrying out by it 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.

35. ~~30.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the BBB Entities shall be paid their reasonable fees and disbursements, in each case at their

standard rates and charges, whether incurred prior to, on, or subsequent to the date of this Order, by the BBB Entities as part of the costs of these proceedings. The BBB Entities are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor, and the BBB Entities' counsel on a weekly basis and, in addition, the BBB Entities are hereby authorized to pay to the Monitor, counsel to the Monitor and counsel to the BBB Entities, retainers, *nunc pro tunc*, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

36. ~~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.

ADMINISTRATION CHARGE

37. ~~32.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and counsel to the BBB Entities 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 \$~~5~~1,250,000 unless permitted by further Order of this Court, as security for their professional fees and disbursements incurred at their standard rates and charges, 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 ~~33~~8 and ~~35~~40 herein.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

38. ~~33.~~ **THIS COURT ORDERS** that the priorities of the Administration Charge~~and~~, the Directors' Charge, and the KERP Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$~~5~~1,250,000); ~~and~~

Second – Directors' Charge (to the maximum amount of \$~~78,2~~500,000); ~~and~~

Third – KERP Charge (to the maximum amount of \$161,000).

39. ~~34.~~ **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge~~or~~, the Directors' Charge or the KERP Charge (together, 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.

40. ~~35.~~ **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person notwithstanding the order of perfection or attachment; ~~provided that the Charges shall rank behind Encumbrances in favour of any Persons that have not been served with notice of the application for this Order. The BBB Entities and the beneficiaries of the Charges shall be entitled to seek priority of the Charges ahead of such Encumbrances on a subsequent motion including, without limitation, on the Comeback Date (as hereinafter defined), on notice to those Persons likely to be affected thereby.~~

41. ~~36.~~ **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court on notice to parties in interest, the BBB Entities shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges unless the BBB Entities also obtain the prior written consent of the Monitor and the beneficiaries of the Charges, or further Order of this Court.

42. ~~37.~~ **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**”) thereunder 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 the 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 document, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds any of the BBB Entities and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by any BBB Entity of any Agreement to which it is 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; and
- (c) the payments made by the BBB Entities pursuant to this Order; and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

43. ~~38.~~ **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the BBB Entities' interest in such real property leases.

SERVICE AND NOTICE

44. ~~39.~~ **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in *The Globe and Mail* (National Edition) a notice containing the information prescribed under the CCAA, and (ii) within five (5) days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, or cause to be sent, in the prescribed manner or by electronic message to the e-mail addresses as last shown on the records of the BBB Entities, a notice to every known creditor who has a claim against the BBB Entities of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with subsection 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of the individuals who are creditors publicly available.

45. ~~40.~~ **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the "**Service List**"). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor's Website (as hereinafter defined) as part of the public materials to be recorded thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

46. **THIS COURT ORDERS** that any employee of either of the BBB Entities that receives a notice of termination from either of the BBB Entities shall be deemed to have received such notice of termination by no more than the third day following the date such notice of termination is delivered, if such notice of termination is sent by email, ordinary mail, expedited parcel, registered mail.

47. ~~41.~~ **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 13 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: www.alvarezandmarsal.com/BBBCanada (the “**Monitor’s Website**”).

48. ~~42.~~ **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol or the CCAA and the regulations thereunder is not practicable (including as a result of COVID-19), the BBB Entities, the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or electronic message to the BBB Entities’ creditors or other interested parties at their respective addresses (including e-mail addresses) as last shown in the books and records of the BBB Entities and that any such service, distribution or notice shall be deemed to be received on the earlier of (a) the date of forwarding thereof, if sent by electronic message on or prior to 5:00 p.m. Eastern Standard/Daylight Time (or on the next business day following the date of forwarding thereof if sent on a non-business day); (b) the next business day following the date of forwarding thereof, if sent by courier, personal delivery, facsimile transmission or electronic message sent after 5:00 p.m. Eastern Standard/Daylight Time; or (c) on the third business day following the date of forwarding thereof, if sent by ordinary mail.

49. ~~43.~~ **THIS COURT ORDERS** that the BBB Entities, the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile or other electronic transmission to the BBB Entities' creditors or other interested parties and their advisors and that any such service, distribution or notice shall be deemed to be received: (a) if sent by courier, on the next business day following the date of forwarding thereof; (b) if delivered by personal delivery or facsimile or other electronic transmission, on the day so delivered; and (c) if sent by ordinary mail, on the third business day after mailing. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, (SOR/2013-221).

GENERAL

~~44. **THIS COURT ORDERS** that any interested party that wishes to amend or vary this Order shall be entitled to appear or bring a motion before this Court on a date to be set by this Court upon the granting of this Order (the "Comeback Date"), and any such interested party shall give not less than two (2) business days' notice to the Service List and any other party or parties likely to be affected by the Order sought in advance of the Comeback Date; provided, however, that the Chargees shall be entitled to rely on this Order as issued and entered and on the Charges and priorities set forth in paragraphs 33 and 35 hereof with respect to any fees, expenses and disbursements incurred, as applicable, until the date this Order may be amended, varied or stayed.~~

50. ~~45.~~ **THIS COURT ORDERS** that, ~~notwithstanding paragraph 44 of this Order,~~ the BBB Entities or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their powers and duties under this Order or in the interpretation or application of this Order.

51. ~~46.~~ **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 any of the BBB Entities, the Business or the Property.

52. ~~47.~~ **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body or agency having jurisdiction in Canada or in the United States, 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 and agencies 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, or to assist the BBB Entities and the Monitor and their respective agents in carrying out the terms of this Order.

53. ~~48.~~ **THIS COURT ORDERS** that each of the BBB Entities and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body or agency, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

54. **THIS COURT ORDERS** that Confidential Exhibit “G” to the Second Etlin Affidavit shall be and is hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

55. ~~49.~~ **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 without the need for entry or filing.

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

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

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

AMENDED & RESTATED INITIAL ORDER

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TAB 5

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

| | | |
|------------------------|---|-----------------------|
| THE HONOURABLE |) | TUESDAY, THE 21ST |
| |) | |
| CHIEF JUSTICE MORAWETZ |) | DAY OF FEBRUARY, 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**")

SALE APPROVAL ORDER

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, approving the transactions contemplated under a consulting agreement between a contractual joint venture comprised of Hilco Merchant Retail Solutions ULC, Gordon Brothers Canada ULC, Tiger Asset Solutions Canada, ULC and B. Riley Retail Solutions LLC, (collectively, the "**Consultant**") and Bed Bath & Beyond Canada L.P. ("**BBB L.P.**", and together with the Applicant, the "**BBB Entities**") dated as of February 15, 2023 (the "**Consulting Agreement**") and certain related relief, was heard this day via videoconference.

ON READING the Notice of Motion of the Applicant, the Affidavit of Holly Etlin sworn on February 15, 2023 including the exhibits thereto (the "**Second Etlin Affidavit**"), the First Report of Alvarez & Marsal Canada Inc., in its capacity as Court-appointed monitor (in such capacity, the "**Monitor**"), dated February ●, 2023, filed, and on hearing the submissions of respective counsel for the BBB Entities, the Monitor, the Consultant, and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit of Service of ● sworn February ●, 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 (as amended and restated from time to time, the “**Initial Order**”), the Sale Guidelines (as defined below) or the Consulting Agreement (attached as Exhibit “F” to the Second Etlin Affidavit), as applicable.

THE CONSULTING AGREEMENT

3. **THIS COURT ORDERS** that the Consulting Agreement, including the sale guidelines attached hereto as Schedule “A” (the “**Sale Guidelines**”), and the transactions contemplated thereunder are hereby approved, authorized and ratified, and that the execution of the Consulting Agreement by BBB L.P. is hereby approved, authorized, and ratified with such minor amendments as BBB L.P. (with the consent of the Monitor) and the Consultant may agree to in writing. Subject to the provisions of this Order and the Initial Order, BBB L.P. is hereby authorized and directed to take any and all actions as may be necessary or desirable to implement the Consulting Agreement and each of the transactions contemplated therein. Without limiting the foregoing, BBB L.P. is authorized to execute any other agreement, contract, deed or any other document, or take any other action, which could be required or be useful to give full and complete effect to the Consulting Agreement.

THE SALE

4. **THIS COURT ORDERS** that BBB L.P., with the assistance of the Consultant, is authorized to conduct the Sale in accordance with this Order, the Consulting Agreement and the Sale Guidelines and to advertise and promote the Sale in accordance with the Sale Guidelines. If there is a conflict between this Order, the Consulting Agreement and the Sale Guidelines, the order of priority of documents to resolve such conflicts is as follows: (1) this Order; (2) the Sale Guidelines; and (3) the Consulting Agreement.

5. **THIS COURT ORDERS** that, subject to paragraph 12 of the Initial Order, BBB L.P., with the assistance of the Consultant, is authorized to market and sell the Merchandise, FF&E and Additional Consultant Goods (as such terms are defined in the Consulting Agreement) in accordance with the Sale Guidelines, free and clear of all liens, claims, encumbrances, security interests, mortgages, charges, trusts, deemed trusts, executions, levies, financial, monetary or other claims, whether or not such claims have attached or been perfected, registered or filed and whether secured, unsecured, quantified or unquantified, contingent or otherwise, whensoever and howsoever arising, and whether such claims arose or came into existence prior to the date of this Order or came into existence following the date of this Order (in each case, whether contractual, statutory, arising by operation of law, in equity or otherwise) (all of the foregoing, collectively “**Claims**”), including, without limitation the Administration Charge, the Directors’ Charge and the KERP Charge and any other charges hereafter granted by this Court in these proceedings (collectively, the “**CCAA Charges**”), and all Claims, charges, security interests or liens evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), or any other personal or movable property registration system (all of such Claims, charges (including the CCAA Charges), security interests and liens collectively referred to herein as “**Encumbrances**”), which Encumbrances will attach instead to the proceeds of the Sale (other than amounts specified in paragraph 15 of this Order) in the same order and priority as they existed immediately prior to such Sale.

6. **THIS COURT ORDERS** that, subject to the terms of this Order, the Initial Order and the Sale Guidelines, or any greater restrictions in the Consulting Agreement or the Sale Guidelines, the Consultant shall have the right to enter and use the Stores and all related store services and all facilities and all furniture, trade fixtures and equipment, including the FF&E, located at the Stores, and other assets of BBB L.P. as designated under the Consulting Agreement, for the purpose of conducting the Sale and for such purposes, the Consultant shall be entitled to the benefit of BBB L.P.’s stay of proceedings provided under the Initial Order, as such stay of proceedings may be extended by further Order of the Court.

7. **THIS COURT ORDERS** that until the Sale Termination Date for each Store (which shall in no event be later than April 30, 2023, subject to further Order of the Court), the Consultant shall have access to the Stores in accordance with the applicable Leases (as such term is defined in the Sale Guidelines) and the Sale Guidelines on the basis that the Consultant is assisting BBB L.P.

and BBB L.P. has granted the right of access to the applicable Stores to the Consultant. To the extent that the terms of the applicable Leases are in conflict with any term of this Order or the Sale Guidelines, the terms of this Order and the Sale Guidelines shall govern.

8. **THIS COURT ORDERS** that nothing in this Order shall amend or vary, or be deemed to amend or vary the terms of the Leases. Nothing contained in this Order or the Sale Guidelines shall be construed to create or impose upon BBB L.P. or the Consultant any additional restrictions not contained in the applicable Lease.

9. **THIS COURT ORDERS** that, subject to and in accordance with the Consulting Agreement, the Sale Guidelines and this Order, the Consultant is authorized to advertise and promote the Sale, without further consent of any Person (as defined in the Initial Order) other than BBB L.P. and the Monitor as provided under the Consulting Agreement or a Landlord (as defined in the Sale Guidelines) as provided under the Sale Guidelines.

10. **THIS COURT ORDERS** that until the Sale Termination Date, the Consultant shall have the right to use, without interference by any intellectual property licensor, any of BBB L.P.'s trade names, trademarks and logos relating to and used in connection with the operation of the Stores, as well as all licenses and rights granted to BBB L.P. to use the trade names, trademarks, and logos of third parties, solely for the purpose of advertising and conducting the Sale of the Merchandise, FF&E and Additional Consultant Goods in accordance with the terms of the Consulting Agreement, the Sale Guidelines, and this Order.

CONSULTANT LIABILITY

11. **THIS COURT ORDERS** that the Consultant shall act solely as an independent consultant to BBB L.P. and that it shall not be liable for any claims against BBB L.P. other than as expressly provided in the Consulting Agreement (including the Consultant's indemnity obligations thereunder) or the Sale Guidelines and, for greater certainty:

- (a) the Consultant shall not be deemed to be an owner or in possession, care, control or management of the Stores, of the assets located therein or associated therewith or of BBB L.P.'s employees located at the Stores or any other property of BBB L.P.;

- (b) the Consultant shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law or equity for any purpose whatsoever, and shall not incur any successorship liabilities whatsoever; and
- (c) BBB L.P. shall bear all responsibility for any liability whatsoever (including without limitation, losses, costs, damages, fines or awards) relating to claims of customers, employees and any other Persons arising from events occurring at the Stores during and after the term of the Sale, or otherwise in connection with the Sale, except to the extent that such claims are the result of events or circumstances caused or contributed to by the gross negligence or wilful misconduct of the Consultant, its employees, agents or other representatives, or otherwise in accordance with the Consulting Agreement.

12. **THIS COURT ORDERS** that, to the extent any Landlord may have a claim against BBB L.P. arising solely out of the conduct of the Consultant in conducting the Sale for which BBB L.P. has one or more claims against the Consultant under the Consulting Agreement, BBB L.P. shall be deemed to have assigned such claims free and clear to the applicable Landlord (the “**Assigned Landlord Rights**”); provided that each such Landlord shall only be permitted to advance each such claims against the Consultant if written notice, including the reasonable details of such claims, is provided by such Landlord to the Consultant, BBB L.P. and the Monitor during the period from the Sale Commencement Date to the date that is thirty (30) days following the Sale Termination Date, provided however that the Landlords shall be provided with access to the Stores to inspect the Stores within fifteen (15) days following the Sale Termination Date.

CONSULTANT AN UNAFFECTED CREDITOR

13. **THIS COURT ORDERS** that the Consulting Agreement shall not be repudiated, resiliated or disclaimed by BBB L.P. nor shall the claims of the Consultant pursuant to the Consulting Agreement be compromised or arranged pursuant to any plan of arrangement or compromise among the BBB Entities and their creditors (a “**Plan**”) and, for greater certainty, the Consultant shall be treated as an unaffected creditor in these proceedings and under any Plan.

14. **THIS COURT ORDERS** that BBB L.P. is hereby authorized and directed, in accordance with the Consulting Agreement, to remit all amounts that become due to the Consultant thereunder.

15. **THIS COURT ORDERS** that no Encumbrances shall attach to any amounts payable or to be credited or reimbursed to, or retained by, the Consultant pursuant to the Consulting Agreement, including, without limitation, any amounts to be reimbursed by BBB L.P. to the Consultant pursuant to the Consulting Agreement, and at all times the Consultant will retain such amounts, free and clear of all Encumbrances, notwithstanding any enforcement or other process or Claims, all in accordance with the Consulting Agreement.

16. **THIS COURT ORDERS** that notwithstanding:

- (a) the pendency of these proceedings;
- (b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (“**BIA**”) in respect of the BBB Entities, or any bankruptcy order made pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of the BBB Entities;
- (d) the provisions of any federal or provincial statute; 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, mortgage, security agreement, debenture, sublease, offer to lease or other document or agreement to which the BBB Entities are a party;

the Consulting Agreement and the transactions and actions provided for and contemplated therein, including without limitation, the payment of amounts due to the Consultant and the Assigned Landlord Rights shall be binding on any trustee in bankruptcy that may be appointed in respect of the BBB Entities and shall not be void or voidable by any Person, including any creditor of the BBB Entities, nor shall they, or any of them, constitute or be deemed to be a preference, fraudulent conveyance, transfer at undervalue or other challengeable reviewable transaction, under the BIA or any applicable law, nor shall they constitute oppressive or unfairly prejudicial conduct under any applicable law.

OTHER

17. **THIS COURT ORDERS** that the BBB Entities are authorized and permitted to transfer to the Consultant personal information in the BBB Entities' custody and control solely for the purposes of assisting with and conducting the Sale and only to the extent necessary for such purposes.

GENERAL

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

19. **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.

20. **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.

**SCHEDULE “A”
SALE GUIDELINES**

(See attached)

SALE GUIDELINES

The following procedures shall apply to any Sale to be held at Bed Bath & Beyond Canada L.P.'s ("**Merchant**") retail stores (collectively, the "**Stores**").

Terms capitalized but not defined in these Sale Guidelines have the meanings ascribed to them in the initial order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") granted on February 10, 2023 in the CCAA Proceedings (as may be amended and restated from time to time, the "**Initial Order**"), or the Consulting Agreement (as defined below), as applicable.

1. Except as otherwise expressly set out herein, and subject to: (i) the Order of the Court granted on February [], 2023 in the CCAA Proceedings (the "**Approval Order**"), approving the Consulting Agreement between a contractual joint venture comprised of Hilco Merchant Retail Solutions, ULC, Gordon Brothers Canada ULC, Tiger Asset Solutions, ULC, and B. Riley Retail Canada, ULC (collectively, "**Consultant**") and Merchant, dated February 15, 2023 (the "**Consulting Agreement**") and the transactions contemplated thereunder, (ii) any further Order of the Court, or (iii) any subsequent written agreement between Merchant and its applicable landlord(s) (individually, a "**Landlord**" and, collectively, the "**Landlords**") and approved by Consultant, the Sale shall be conducted in accordance with the terms of the applicable leases/or other occupancy agreements for each of the affected Stores (individually, a "**Lease**" and, collectively, the "**Leases**"). However, nothing contained herein shall be construed so as to create or impose upon Merchant or Consultant any additional restrictions not contained in the applicable Lease.
2. The Sale shall be conducted so that each of the Stores remain open during their normal hours of operation provided for in the respective Leases for the Stores until the applicable premises vacate date for each Store under the Consulting Agreement (the "**Vacate Date**"), and in all cases no later than the Sale Termination Date. Rent payable under the respective Leases shall be paid as provided in the Initial Order.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws and regulations, unless otherwise set out herein or ordered by the Court.
4. All display and hanging signs used by Consultant in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, Consultant may advertise the Sale at the Stores as a "everything on sale", "everything must go", "store closing" or similar theme sale at the Stores (provided, however, that no signs shall advertise the Sale as a "bankruptcy", a "liquidation" or a "going out of business" sale, it being understood that the French equivalent of "clearance" is "liquidation" and is permitted to be used). Forthwith upon request from a Landlord, the Landlord's counsel, Merchant or the Monitor, Consultant shall provide the proposed signage packages along with proposed dimensions by email or facsimile to the applicable Landlords or to their counsel of record and the applicable Landlord shall notify Consultant of any requirement for such signage to otherwise comply with the terms of the Lease and/or the Sale Guidelines and where the provisions of the Lease conflicts with these Sale Guidelines, these Sale Guidelines shall govern. Consultant shall not use neon or day-glow signs or any handwritten signage (save that handwritten "you pay" or "topper" signs may be used). If a Landlord is concerned with "Store Closing" signs being placed in the front window of a Store or with the number or size of the signs in the front window, Merchant, Consultant and the Landlord will work together to resolve the dispute. Furthermore, with respect to enclosed mall Store locations without a separate entrance from the exterior of the enclosed mall, no exterior signs or signs in common areas of a mall shall be used unless explicitly permitted by the applicable Lease. In addition, Consultant shall be permitted to utilize exterior banners/signs at stand alone or strip mall Stores or enclosed mall Store locations with a separate entrance from the exterior of the enclosed mall; provided, however, that: (i) no signage in any other common areas

of a mall shall be used; and (ii) where such banners are not explicitly permitted by the applicable Lease and the Landlord requests in writing that banners are not to be used, no banners shall be used absent further Order of the Court, which may be sought on an expedited basis on notice to the Service List. Any banners used shall be located or hung so as to make clear that the Sale is being conducted only at the affected Store and shall not be wider than the premises occupied by the affected Store. All exterior banners shall be professionally hung and to the extent that there is any damage to the facade of the premises of a Store as a result of the hanging or removal of the exterior banner, such damage shall be professionally repaired at the expense of Consultant.

5. Consultant shall be permitted to utilize sign-walkers and street signage; provided, however, such sign-walkers and street signage shall not be located on the shopping centre or mall premises.
6. Conspicuous signs shall be posted in the cash register areas of each Store to the effect that all sales are “final” and customers with any questions or complaints are to call Merchant’s hotline number.
7. Consultant shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on Landlord’s property, unless explicitly permitted by the applicable Lease or, if distribution is customary in the shopping centre in which the Store is located. Otherwise, Consultant may solicit customers in the Stores themselves. Consultant shall not use any giant balloons, flashing lights or amplified sound to advertise the Sale or solicit customers, except as explicitly permitted under the applicable Lease or agreed to by the Landlord, and no advertising trucks shall be used on Landlord property or mall ring roads, except as explicitly permitted under the applicable Lease or agreed to by the Landlord.
8. At the conclusion of the Sale in each Store, Consultant shall arrange that the premises for each Store are in “broom-swept” and clean condition, and shall arrange that the Stores are in the same condition as on the commencement of the Sale, ordinary wear and tear excepted. No property of any Landlord of a Store shall be removed or sold during the Sale. No permanent fixtures (other than Merchant FF&E (as defined below) for clarity) may be removed without the applicable Landlord’s written consent unless otherwise provided by the applicable Lease and in accordance with the Initial Order and the Approval Order. Any trade fixtures or personal property left in a Store after the applicable Vacate Date in respect of which the applicable Lease has been disclaimed by Merchant shall be deemed abandoned, with the applicable Landlord having the right to dispose of the same as the Landlord chooses, without any liability whatsoever on the part of the Landlord. Nothing in this paragraph shall derogate from or expand upon Consultant’s obligations under the Consulting Agreement.
9. Subject to the terms of paragraph 8 above, Consultant may sell furniture, fixtures and equipment owned by Merchant (“**Merchant FF&E**”) and located in the Stores during the Sale. For greater certainty, Merchant FF&E does not include any portion of the Stores’ HVAC system, fire suppression system and fire alarm or sprinkler system. Merchant and Consultant may advertise the sale of Merchant FF&E consistent with these Sale Guidelines on the understanding that the Landlord may require such signs to be placed in discreet locations within the Stores reasonably acceptable to the Landlord. Additionally, the purchasers of any Merchant FF&E sold during the Sale shall only be permitted to remove such Merchant FF&E either through the back shipping areas designated by the Landlord or through other areas after regular Store business hours or, through the front door of the Store during Store business hours if Merchant FF&E can fit in a shopping bag, with the Landlord’s supervision as required by the Landlord and in accordance with the Initial Order and the Approval Order. Consultant shall repair any damage to the Stores resulting from the removal of any Merchant FF&E by Consultant or by third party purchasers of Merchant FF&E from Consultant.

10. Consultant shall not make any alterations to interior or exterior Store lighting, except as authorized pursuant to the affected Lease. The hanging of exterior banners or other signage, where permitted in accordance with the terms of these Sale Guidelines, shall not constitute an alteration to a Store.
11. Merchant hereby provides notice to the Landlords of Merchant and Consultant's intention to sell and remove Merchant FF&E from the Stores. Consultant shall make commercially reasonable efforts to arrange with each Landlord represented by counsel on the Service List and with any other Landlord that so requests, a walk-through with Consultant to identify Merchant FF&E subject to the Sale. The relevant Landlord shall be entitled to have a representative present in the applicable Stores to observe such removal. If the Landlord disputes Consultant's entitlement to sell or remove any Merchant FF&E under the provisions of the Lease, such Merchant FF&E shall remain on the premises and shall be dealt with as agreed between Merchant, Consultant and such Landlord, or by further Order of the Court upon application by Merchant on at least two (2) days' notice to such Landlord and the Monitor. If Merchant has disclaimed or resiliated the Lease governing such Store in accordance with the CCAA and the Initial Order, it 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 the CCAA and the Initial Order), and the disclaimer or resiliation of the Lease shall be without prejudice to Merchant's or Consultant's claim to Merchant FF&E in dispute.
12. If a notice of disclaimer or resiliation is delivered pursuant to the CCAA and the Initial Order to a Landlord while the Sale is ongoing and the Store in question has not yet been vacated, then: (i) during the notice period prior to the effective time of the disclaimer or resiliation, the Landlord may show the affected leased premises to prospective tenants during normal business hours, on giving Merchant, the Monitor and Consultant twenty-four (24) hours' prior written notice; and (ii) at the effective time of the disclaimer or resiliation, the relevant Landlord shall be entitled to take possession of any such Store without waiver of or prejudice to any claims or rights such Landlord may have against Merchant in respect of such Lease or Store, provided that nothing herein shall relieve such Landlord of any obligation to mitigate any damages claimed in connection therewith.
13. Consultant and its agents and representatives shall have the same access rights to the Stores as Merchant under the terms of the applicable Lease, and the Landlords shall have the rights of access to the Stores during the Sale provided for in the applicable Lease (subject, for greater certainty, to any applicable stay of proceedings and the terms of the Initial Order).
14. Merchant and Consultant shall not conduct any auctions of Merchandise or Merchant FF&E at any of the Stores.
15. Consultant shall designate a party to be contacted by the Landlords should a dispute arise concerning the conduct of the Sale. The initial contact person for Consultant shall be Steven E. Fox, Esq., Riemer & Braunstein LLP, Times Square Tower, Seven Times Square, Suite 2506, New York, NY 10036, who may be reached by phone at 212.789.3150 or email at sfox@riemerlaw.com. If the parties are unable to resolve the dispute between themselves, the Landlord or Merchant shall have the right to schedule a "status hearing" before the Court on no less than two (2) days' written notice to the other party or parties and the Monitor, during which time Consultant shall cease all activity in dispute other than activity expressly permitted herein, pending determination of the matter by the Court; provided, however, subject to paragraph 4 of these Sale Guidelines, if a banner has been hung in accordance with these Sale Guidelines and is the subject of a dispute, Consultant shall not be required to take any such banner down pending determination of any dispute.
16. Consultant shall be entitled, as agent for Merchant pursuant to and in accordance with the Consulting Agreement, to include in the Sale additional inventory and other goods from similar vendors not currently supplying goods to Merchant ("**Additional Consultant Goods**") to the extent permitted under the Consulting Agreement, provided that (i) the Additional Consultant Goods sold

as part of the Sale will not exceed \$15,000,000 at cost in the aggregate; (ii) the Additional Consultant Goods are of like kind and category and no lesser quality to the Merchandise, and consistent with any restriction on usage of the Stores set out in the applicable Leases; (iii) the Additional Consultant Goods will be distributed amongst the Stores such that no Store receives Additional Consultant Goods aggregating more than 10% (determined by measuring the cost of such goods relative to the total retail value of the Merchandise).

17. Nothing herein or in the Consulting Agreement is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or shall, or shall be deemed to, or grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.
18. These Sale Guidelines may be amended by written agreement between Consultant, Merchant and the applicable Landlord, in consultation with the Monitor; provided, however, that such amended Sale Guidelines shall not affect or bind any other Landlord not privy thereto without further Order of the Court approving such amended Sale Guidelines.

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

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

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

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SALE APPROVAL ORDER

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Lawyers for the Applicant

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Proceeding commenced at: TORONTO

MOTION RECORD OF THE APPLICANT
(Motion for Amended and Restated Initial Order and Sale
Approval Order)

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