



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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) TUESDAY, THE 11TH
)
CHIEF JUSTICE MORAWETZ) DAY OF APRIL, 2023
)

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF BBB CANADA LTD.
(the "**Applicant**")

ASSIGNMENT, APPROVAL AND VESTING ORDER

THIS MOTION, made by the Applicant pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order, among other things, (i) approving the transactions (collectively, the "**Transactions**" and each, a "**Transaction**") contemplated by the assignment agreements (collectively, the "**Assignment Agreements**" and each, an "**Assignment Agreement**") between, *inter alios*, Bed Bath & Beyond Canada L.P. ("**BBB L.P.**", and together with the Applicant, the "**BBB Entities**") and each of the purchaser parties to the applicable Assignment Agreement as set out in Schedule "A" attached hereto (collectively, the "**Purchasers**" and for each such Assignment Agreement, a "**Purchaser**"), and (ii) assigning to and vesting in the Purchasers, as applicable, all of BBB L.P.'s right, title and interest in and to the leases (as amended, modified, assigned and restated, collectively, the "**Leases**") and other purchased assets described in the Assignment Agreements set out in Schedule "A" hereto (the Leases and such other assets collectively referred to herein as the "**Purchased Assets**"), was heard this day via videoconference.

ON READING the Notice of Motion of the Applicant, the Affidavit of Wade Haddad sworn on April 5, 2023 including the exhibits thereto (the "**Haddad Affidavit**"), and the Second Report of Alvarez & Marsal Canada Inc., in its capacity as Court-appointed monitor (in such

capacity, the “**Monitor**”), dated April 7, 2023, filed, and on hearing the submissions of respective counsel for the BBB Entities, the Monitor, and such other counsel as were present and listed on the Counsel Slip, no one else appearing although duly served as appears from the Affidavit of Service of Emily Paplawski, sworn April 5, 2023, filed:

SERVICE AND DEFINITIONS

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

APPROVAL OF ASSIGNMENT OF PURCHASED ASSETS

3. **THIS COURT ORDERS AND DECLARES** that the Transactions are hereby approved, and the execution and delivery of each of the Assignment Agreements by BBB L.P. is hereby authorized and approved, with such minor amendments as BBB L.P. and the applicable Purchaser may agree to with the consent of the Monitor. BBB L.P. is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transactions and for the conveyance of the Leases to the Purchasers pursuant to the Assignment Agreements and the Monitor shall be authorized to take such additional steps in furtherance of its responsibilities under the Assignment Agreements.
4. **THIS COURT ORDERS** that upon delivery of a Monitor’s Certificate to BBB L.P. and the applicable Purchaser, substantially in the form attached as Schedule “B” hereto (collectively the “**Monitor’s Certificates**” and each, a “**Monitor’s Certificate**”):
 - (a) all of the rights and obligations of BBB L.P. under the Leases described in the applicable Assignment Agreement and set forth under the header “4(a) Leases” in Schedule “A” (collectively, the “**4(a) Leases**” and each, a “**4(a) Lease**”) shall be assigned, conveyed, transferred and assumed by such Purchaser pursuant to section 11.3 of the CCAA and such assignment is valid and binding upon all of the

landlords under the respective 4(a) Leases notwithstanding any restriction or prohibition, if any, contained in any such 4(a) Lease relating to the assignment thereof, including but not limited to, provisions, if any, requiring the consent of or notice for any period in advance of the assignment to any party to any such 4(a) Lease;

(b) all of BBB L.P.'s right, title and interest in and to the Purchased Assets described in the applicable Assignment Agreement shall vest absolutely in such Purchaser free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing:

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

(all of which, as set out in the foregoing paragraphs 4(b)(i) and 4(b)(ii), are collectively referred to as the "**Encumbrances**"), provided that: (A) except as set forth in paragraph 4(a) or (c) or as may be otherwise agreed to by the Purchaser and the applicable landlord with respect to a Lease, nothing herein shall affect the rights and remedies of such landlord against the Purchaser that may arise under or in respect of a Lease; and (B) the Claims and the Encumbrances referred to herein shall not include permitted encumbrances identified in, or pursuant to, the Assignment Agreements. For greater certainty, this Court orders that (i) all of the Encumbrances affected or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets; (ii) nothing in this Order shall affect the rights and remedies under and pursuant to any landlord consent agreement (a "**Consent Agreement**") executed with respect to the Assignment Agreements; and (iii) nothing in this Order shall affect the rights and remedies of a

landlord against an indemnifier with respect to a Lease (each an “**Indemnifier**”, including but not limited to Bed Bath & Beyond Inc., Office Depot, Inc. and OD International, Inc.) arising from any and all indemnity agreements existing between a landlord and an Indemnifier (provided that, for the avoidance of doubt, such indemnity agreements shall be subject to the terms of any applicable Consent Agreement); and

(c) the landlords under the respective Leases are prohibited from exercising any rights or remedies under the Leases, and shall be forever barred, enjoined and estopped from taking such action, by reason solely of:

- (i) any defaults arising from the insolvency of the BBB Entities or any of their affiliates;
- (ii) the commencement of these CCAA proceedings;
- (iii) any defaults and/or recapture rights which arise upon the assignment of the Leases to the applicable Purchaser; or
- (iv) BBB L.P. having breached a non-monetary obligation under the Lease unless, (A) the applicable landlord under a Lease and the applicable Purchaser have agreed otherwise; or (B) (i) such non-monetary breach arises or continues after the Lease is assigned to the applicable Purchaser; (ii) such non-monetary breach is capable of being cured by such Purchaser; and (iii) such Purchaser has failed to remedy the default after having received notice of such default pursuant to the terms of the Lease,

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

5. **THIS COURT ORDERS** that no 4(a) Lease may be assigned unless all amounts owing in respect of monetary defaults under the 4(a) Leases, other than those arising by reason only of the BBB Entities’ insolvency, the commencement of these CCAA proceedings, or BBB L.P.’s

failure to perform a non-monetary obligation (“Cure Costs”), are paid on the Closing Date (as defined below), or such later date as may be agreed to by the applicable Purchaser and the applicable landlord under the Lease on prior written notice to the Monitor (the “Closing Date” being the date of the delivery of the applicable Monitor’s Certificate).

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

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

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

9. **THIS COURT ORDERS** that Confidential Exhibit “G” to the Haddad Affidavit shall be and is hereby sealed, kept confidential and shall not form part of the public record, until the earlier of: (i) the closing of each Assignment Agreement; (ii) disclaimer of the Leases subject to each Assignment Agreement; or (iii) further Order of the Court.

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

GENERAL

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

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

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

12. **THIS COURT ORDERS** that the Sale Approval Order in these proceedings dated February 21, 2023, is hereby amended such that the "Consultant" shall be defined as Hilco Merchant Retail Solutions ULC, Gordon Brothers Canada ULC, Tiger Asset Solutions Canada, ULC and B. Riley Retail Canada, ULC.

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

14. **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.

15. **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.



A handwritten signature in blue ink, appearing to read "A. J. ...", is written above a horizontal line.

SCHEDULE "A"
LEASES

(See attached)

LEASE ASSIGNMENT AND ASSUMPTION AGREEMENTS

1. Omnibus Assignment and Assumption of Leases, FF&E and Trade Fixtures among BBB LP, 11607987 Canada Inc. dba DKB Capital and Bed Bath & Beyond Inc., dated March 28, 2023, in respect of the following Leases:

4(a) Leases:

- (a) Lease dated March 31, 2009 between RioCan Holdings (Brentwood Village) Inc., as successor in interest to Riokim Holdings (Alberta) Inc., and BBB LP (Brentwood Village (Calgary), 3630 Brentwood Road NW, Suite 600, Calgary, AB - Store 2013);
- (b) Lease dated April 23, 2009 between Riotrin Properties (Newmarket) Inc. and BBB LP (Green Lane Centre, 18126 Yonge Street, Newmarket, ON - Store 2014);
- (c) Lease dated January 29, 2010 between Calloway REIT (Cambridge) Inc. and BBB LP (Smartcentres Cambridge, 70 Pine Bush Road, Unit 1, Cambridge, ON - Store 2021);
- (d) Lease dated June 29, 2010 between The INCC Corp. and BBB LP (Boardwalk Shopping Centre, 225 The Boardwalk, Unit #2, Kitchener, ON - Store 2025);
- (e) Lease dated July 26, 2011 between Riotrin Properties (Hazeldean) Inc. and BBB LP (Grant Crossing, 5487 Hazeldean Road, Unit 2, Stittsville, ON - Store 2026);
- (f) Lease dated February 13, 2015 between Riotrin Properties (Vaughan 2) Inc., Riotrin Properties (Vaughan 3) Inc., 1493130 Ontario Limited, Riotrin Properties (Vaughan) Inc., and BBB LP (Riocan Colossus Centre, 67 Colossus Drive, Unit D10, Vaughan, ON - Store 2049);
- (g) Lease dated November 21, 2016 between Calloway REIT (Halifax) Ltd. and BBB LP (Halifax Bayers Lake Centre, 208 Chain Lake Drive, Halifax, NS - Store 2052);
- (h) Lease dated July 29, 2015, between Riokim Holdings (Ontario) Inc. and BBB LP (Riocan Thickson Ridge Centre, 1650 Victoria Street East, Unit #1, Whitby, ON - Store 3702);
- (i) Lease dated April 24, 2018 between RioCan Holdings (Brentwood Village) Inc. and BBB LP (Brentwood Village (Calgary), 3630 Brentwood Road, Calgary, AB - Store 3709).

4(b) Leases:

- (a) Lease dated June 6, 2007, between Yonge Bayview Holdings Inc. and BBB LP, as successor in interest to the Applicant (Bayview Glen, 225 High Tech Road, Unit #1, Richmond Hill, ON - Store 2001);

- (b) Lease dated November 19, 2008, between West Edmonton Mall Property Inc. and BBB LP (West Edmonton Mall, 8882 170 Street, Suite 2554, Edmonton, AB - Store 2007);
- (c) Lease dated December 23, 2008 between 1431582 Alberta Inc. and BBB LP, as successor in interest of OD International, Inc. (Chinook, 306 Glenmore Trail, S.W., Calgary, AB - Store 2022);
- (d) Lease dated June 2, 2010 between 366 North Front Belleville Holdings Inc., as successor-in-interest to 151516 Canada Inc., and BBB LP (Bell Front Shopping Centre, 366 North Front Street, Unit 25, Belleville, ON - Store 2024);
- (e) Lease dated June 8, 2011 between McIntosh Properties Ltd. and BBB LP (Orchard Shopping Centre, 1876 Cooper Road, Kelowna, BC - Store 2027);
- (f) Lease dated May 6, 2011, between S.R.V. Developments Ltd., Kamloops Holdings Inc. and BBB LP (Columbia Square Shopping Centre, 300-500 Notre Dame Drive, Kamloops, BC - Store 2028);
- (g) Lease dated November 18, 2011 between Village Shopping Centre (2006) Inc., as successor in interest to Village Shopping Centre (NL) Inc., and BBB LP (Village Mall, 430 Topsail Road, St. John's, NF - Store 2031);
- (h) Lease dated May 14, 2014 between AB Metro Properties Ltd. and BBB LP (Station Square, 6200 McKay Avenue, Unit 240, Burnaby, BC - Store 2044);
- (i) Lease dated August 29, 2015 between West Broadway Centre Ltd. and BBB LP (1740 West Broadway, Vancouver, BC - Store 2051);
- (j) Lease dated May 13, 2019 between ROYOP (Legacy) Development Ltd. and BBB LP (Township Shopping Centre, 22207 Macleod Trail Southeast, Calgary, AB - Store 2057);
- (k) Lease dated November 27, 2013, between Canadian Property Holdings (Alberta) Inc., Cameron Corporation and BBB LP (South Edmonton Common, 2017 98th Street NW, Edmonton, AB - Store 3701);
- (l) Lease dated May 26, 2015 between Langley City Square Properties Ltd. and BBB LP (Langley City Square, Unit 110 - 19860 Langley Bypass, Langley, BC - Store 3704);
- (m) Lease dated July 17, 2017 between West Edmonton Mall Property Inc. and BBB LP (West Edmonton Mall, 8882 170 Street, Suite 2049, Edmonton, AB - Store 3706);
- (n) Lease dated April 10, 2018 between 1699259 Ontario Limited, 2573268 Ontario Inc. and BBB LP (Wonderland Gateway Centre, 3325 Wonderland Road, Unit #2, London, ON - Store 3708)

SCHEDULE "B"
FORM OF MONITOR'S CERTIFICATE

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

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

MONITOR'S CERTIFICATE

RECITALS

A. All undefined terms in this Monitor's Certificate have the meanings ascribed to them in the Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated April 11, 2023 (the "**Assignment Order**").

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

THE MONITOR CERTIFIES the following:

1. _____ [PURCHASER] (the "**Assignee**") has paid and BBB L.P. has received the Consideration payable on the Closing Date pursuant to the Assignment Agreement between, *inter alios*, the Assignee and BBB L.P. (each as defined in such Assignment Agreement);

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

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

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

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

By: _____
Name:
Title:

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

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

**ASSIGNMENT, APPROVAL AND VESTING
ORDER**

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