



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 affidavit of Holly Etlin sworn February 20, 2023 and the exhibits thereto (the "**Third 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 17, 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, the Second Etlin Affidavit and the Third 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.

17. **THIS COURT ORDERS** 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**"), (i) any Landlord claim pursuant to an indemnity, guarantee or surety executed by BBBI 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**"); and (ii) any Landlord claim pursuant to an indemnity, guarantee or surety executed by BBBI in relation to any BBB Entity shall be unaffected by any determination of any rights, remedies and claims of such Landlords as against the BBB Entities, whether made in the within proceedings under the CCAA or in any subsequent proposal or bankruptcy proceedings under the BIA, other than that any recoveries under such proceedings received by such Landlords shall constitute a reduction and offset to such claim.

18. **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

19. **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

20. **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

21. **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

22. **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

23. **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

24. **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.

25. **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 39 and 41 herein.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

26. **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

27. **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.

28. **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 27 of this Order. The Directors' Charge shall have the priority set out in paragraphs 39-41 herein.

29. **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 27 of this Order.

APPOINTMENT OF MONITOR

30. **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.

31. **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.

32. **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.

33. **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.

34. **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.

35. **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.

36. **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.

37. **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

38. **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 39 and 41 herein.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

39. **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),

40. **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.

41. **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.

42. **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.

43. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") 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.

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

SERVICE AND NOTICE

45. **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.

46. **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.

47. **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.

48. **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**”).

49. **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.

50. **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

51. **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.

52. **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.

53. **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.

54. **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.

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.



Chief Justice G.B. Morawetz

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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