

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 Assignment and Approval & Vesting Order)**

April 5, 2023

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

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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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(As at April 5, 2023)**

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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

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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.

NOTICE OF MOTION

The Applicant, BBB Canada Ltd. ("**Applicant**") will make a motion before the Honourable Chief Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) on April 11, 2023 at 9:00 AM, or as soon after that time as the motion can 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 Order substantially in the form attached as **Tab 3** of the Motion Record:
 - (a) approving the transactions contemplated by the Omnibus Assignment and Assumption of Leases, FF&E and Trade Fixtures Agreement, dated March 28, 2023 (the "**DKB Capital Agreement**") among Bed Bath & Beyond Canada L.P. ("**BBB LP**"), and together with the Applicant, "**BBB Canada**"), Bed Bath & Beyond Inc. ("**BBBI**"), and 11607987 Canada Inc., dba DKB Capital ("**DKB Capital**");

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- (b) assigning certain Leases (as defined below) to DKB Capital pursuant to section 11.3 of the *Companies' Creditors Arrangement Act*, R.S.C., 1985 c. C-36 (the "CCAA");
 - (c) vesting BBB LP's right, title and interest in and to certain Leases and the other purchased assets described in the DKB Capital Agreement free and clear of all Encumbrances other than permitted encumbrances identified in, or pursuant to, the DKB Capital Agreement; and
 - (d) directing that the unredacted copy of the DKB Capital Agreement be treated as confidential and sealed, and not form part of the public record, until the earlier of:
 - (i) the closing of the DKB Capital Agreement, (ii) disclaimer of the Leases subject to the DKB Capital Agreement, or (iii) further order of this Honourable Court.
2. Such other and further relief as counsel may request and this Honourable Court may allow.

THE GROUNDS FOR THIS MOTION ARE:

- 3. All references to monetary amounts are in Canadian dollars unless noted otherwise;
- 4. On February 10, 2023, BBB Canada was granted protection under the CCAA pursuant to an Initial Order (the "**Initial Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**").
- 5. On February 21, 2023, the Applicant was granted:
 - (a) an Amended and Restated Order ("**ARIO**"), which extended the Stay Period up to and including May 1, 2023, and extended the stay of any proceeding against BBBI

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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 “**Third Party Stay**”) to May 1, 2023; and

- (b) a Sale Approval Order (the “**Sale Approval Order**”) which, among other things, approved BBB Canada entering into a consulting agreement with a contractual joint venture party (the “**Consultant**”) to complete the liquidation of all merchandise and owned furnishings, trade fixtures, equipment and improvements to real property (“**FF&E**”) located in the Canadian retail stores, the warehouse, and the corporate office in Mississauga, and approved sale guidelines for the orderly liquidation;

Marketing and Sale Process for Leases

6. The ARIO authorizes BBB Canada to dispose of redundant or non-material assets not exceeding \$500,000 in any one transaction or \$2.5 million in the aggregate and to apply to the Court for such approval, vesting, or other Orders as may be necessary to consummate sales transaction for all or any part of the Property (as defined in the ARIO). The ARIO also authorizes and empowers BBB Canada to retain agents it deems reasonably necessary or desirable in the ordinary course of business or to carry out the terms of the ARIO;

7. In consultation with the Monitor, BBB Canada retained Retail Ventures CND Inc. (“**RVC**”) as listing agent for and on behalf of BBB LP to market and facilitate the sale of leases and other property rights for some or all of BBB Canada’s retail stores (the “**Leases**”);

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8. In order to complete the marketing process in a cost effective and proportionate manner based on unknown recoveries, BBB Canada determined, in consultation with the Monitor, that the process should be undertaken in accordance with the authority granted to BBB Canada in the ARIO to proceed with an orderly wind-down of the Business (as defined in the ARIO), as opposed to seeking advance approval of the marketing and sale process;

9. To date, the marketing process has culminated in the execution by BBB LP and BBBI of the DKB Capital Agreement and the three (3) Lease Surrender Agreements which, together, relate to 32 of BBB Canada's 65 Leases. BBB Canada continues to negotiate four (4) other lease assignment and assumption agreements with third parties which are substantially advanced but not yet finalized. BBB Canada intends to continue working diligently with the purchasers to finalize and execute each lease assignment and assumption agreement prior to the hearing of BBB Canada's motion on April 11, 2023 so that approval of those transactions can be sought at that time;

The Lease Surrender Agreements

10. BBB LP and BBBI executed three (3) Lease Surrender Agreements on April 2 and April 3, 2023. BBB Canada is not seeking any specific relief with respect to any of the Lease Surrender Agreements as the consideration payable both on a standalone basis and on an aggregate basis fall under the defined monetary thresholds in the ARIO;

11. Pursuant to each of the Lease Surrender Agreements, BBB LP has agreed to surrender the applicable lease on an "as is, where is" basis, and the applicable landlord has agreed to (i) pay cash consideration of an agreed sum to the Monitor, in trust; and (ii) release BBB LP and BBBI from

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any and all claims relating to or arising from the lease, the real property interests, the premises, the property and/or the BBBI Indemnities granted with respect to the applicable lease;

12. The Monitor supports the execution and closing of the Lease Surrender Agreements;

DKB Capital Agreement

13. On March 28, 2023, BBB LP, BBBI, and DKB Capital entered into the DKB Capital Agreement relating to twenty-nine (29) Leases;

14. Under the DKB Capital Agreement, BBB LP has agreed to assign and transfer, and DKB Capital agreed to assume, all of BBB LP's right, title and interest in and to: (i) each Assigned Lease (as defined below) and the Premises demised pursuant to the Assigned Leases (the "**Assigned Premises**") on an "as is, where is" basis, including all related rights, benefits and advantages contained in each Assigned Lease; (ii) FF&E and Trade Fixtures (as defined in the DKB Capital Agreement) existing as of March 28, 2023 at premises which are Assigned Premises (the "**Assigned Assumed Location Assets**"); and (iii) FF&E and Trade Fixtures existing as of March 28, 2023 at premises which are not Assigned Premises and are expressly listed in Schedule "C" to the DKB Capital Lease (the "**Assigned Non-Assumed Location Assets**");

15. "Assigned Leases" are comprised of all Leases listed in the DKB Capital Agreement that: (i) do not require the consent of the landlord to the assignment and do not require prior notice to the landlord of the assignment, or that require prior notice but do not provide the landlord with any termination right or entitlement to a longer notice period than was actually provided to the landlord in respect of the assignment (collectively, the "**No-Consent Leases**"); and (ii) do require landlord consent for the assignment and such consent has been obtained by April 11, 2023;

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16. DKB paid to the Monitor, in trust, cash consideration of a specific sum allocated among the 29 Leases subject to the DKB Capital Agreement, the FF&E and Trade Fixtures associated with the 29 Leases, and the Assigned Non-Assumed Location Assets, to be held in escrow;

17. Should any of the 29 Leases not become “Assigned Leases” because the consent of the landlord has not been obtained by April 11, 2023, or an assignment Order has not been granted by the Court, BBB Canada may elect to deem such Leases to be “Unassigned Leases” and excluded from the scope of the DKB Capital Agreement, and all cash consideration allocated to such “Unassigned Leases” will be returned to DKB Capital;

18. Of the 29 Leases subject to the DKB Capital Agreement, (a) eight Leases are “No-Consent Leases”, (b) six landlords have provided the required landlord consents to the assignments of the applicable Lease and releases of BBB LP and BBBI, and (c) based on discussions to date, BBB Canada anticipates that landlords in respect of eight leases for which consents have not be obtained will not oppose an assignment of such Leases to DKB Capital pursuant to an Order under section 11.3 of the CCAA.

19. BBB Canada will continue to work with all landlords to obtain the necessary consents and releases for the remaining seven (7) Leases subject to the DKB Capital Agreement and will provide an update to the Court prior to, or at, at hearing of BBB Canada’s motion on April 11, 2023. If certain consents/waivers are not finalized by this date, BBB Canada may seek an Order at a later date, with notice to the applicable landlord, assigning BBB Canada’s rights, title and obligations under the Unassigned Leases to DKB Capital;

20. The DKB Capital Agreement is expressly subject to the approval of this Court;

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21. RVC, BBB Canada, and the Monitor believe that the consideration paid by DKB Capital for the applicable Leases is fair and reasonable in the circumstances, representing the highest, non-overlapping, executable offer received within the marketing process for the 29 Leases;
22. DKB Capital is an affiliate of Putman Investments which owns retail brands like *Toys “R” Us*, *Babies “R” Us Canada*, *Sunrise Records*, *For Your Entertainment Ltd.* and *HMV*. DKB Capital has covenanted that it has the financial ability to close the transaction, pay all rent at the times and in the manner provided in each Lease, make all payments covenanted to be paid by the tenant under the Lease, and otherwise assume, observe, perform and be liable for the performance the Leases that it will assume from BBB LP;
23. No amendments to the permitted use restrictions, go dark rights, or other provisions are being sought by BBB Canada or DKB Capital that would prejudice any landlord rights;
24. The Monitor supports BBB Canada’s request for approval of the DKB Capital Agreement;
25. The unredacted copy of the DKB Capital Agreement contains commercially sensitive information regarding the allocation of the consideration paid by DKB Capital for each Lease and associated FF&E purchased thereunder, and publication or dissemination of the consideration payable for the assignment of the Leases would pose a serious risk to the commercial interests of BBB Canada and its stakeholders should the DKB Capital Agreement fail to close;

Other Grounds

26. The provisions of the CCAA, including s. 11.02, s.11.3, and s. 36 and the inherent and equitable jurisdiction of this Honourable Court;

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27. Rule 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 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
28. Such further and other grounds as the counsel may advise.

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

- (a) the Affidavit of Wade Haddad sworn April 5, 2023;
- (b) the Second Report of the Monitor, to be filed;
- (c) Draft Approval and Vesting Order; and
- (d) such further and other material as counsel may advise and this Honourable Court may allow.

April 5, 2023

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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.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION

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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 WADE HADDAD

I, Wade Haddad, of the City of Union, in the State of New Jersey, MAKE OATH AND
SAY:

1. I am the Senior Vice President, Real Estate and Store Development, at 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 Senior Vice President, Real Estate and Store Development at BBBI since September 2020. I am also an officer of the Applicant. I have more than 25 years of experience in retail and corporate multi-brand portfolio management and have overseen real estate and store development functions for numerous companies and brands throughout my career. I hold a Bachelor of Arts from Princeton University and a Juris Doctor from the University of Detroit Mercy School of Law.

2. As Senior Vice President, Real Estate and Store Development at BBBI, I oversaw both the retention of Retail Ventures CND Inc. ("**RVC**") as listing agent for and on behalf of BBB LP and the subsequent process, described in greater detail below, undertaken by RVC since February 2023

to monetize BBB LP's Leases (as defined below) for the benefit of BBB Canada's stakeholders. Accordingly, I 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 a motion by BBB Canada for an Order substantially in the form attached at **Tab 3** to the Motion Record (the "**Order**"):

- (a) approving the transactions contemplated by the Omnibus Assignment and Assumption of Leases, FF&E and Trade Fixtures Agreement, dated March 28, 2023 (the "**DKB Capital Agreement**") among BBB LP, BBBI and 11607987 Canada Inc., dba DKB Capital ("**DKB Capital**");
- (b) assigning certain Leases (as defined below) to DKB Capital pursuant to section 11.3 of the *Companies' Creditors Arrangement Act*, RSC 1985 c C-36 (the "**CCAA**");
- (c) vesting BBB LP's right, title and interest in and to certain Leases and the other purchased assets described in the DKB Capital Agreement free and clear of all Encumbrances other than permitted encumbrances identified in, or pursuant to, the DKB Capital Agreement; and
- (d) directing that the unredacted copy of the DKB Capital Agreement be treated as confidential and sealed, and not form party of the public record, until the earlier of:

(i) the closing of the DKB Capital Agreement, (ii) disclaimer of the Leases subject to the DKB Capital Agreement, or (iii) further order of this Honourable Court.

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 Filing Date

5. On February 10, 2023, BBB Canada was granted protection under the CCAA pursuant to an Initial Order (the "**Initial Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**").

6. 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 (the "**Third Party Stay**"); (v) granted a charge as security for the respective fees and disbursements of counsel to BBB Canada, the Monitor and the 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**").

7. On February 21, 2023, the Court granted:

- (a) an Amended and Restated Initial Order (“**ARIO**”) which, among other things, extended the Stay Period up to and including May 1, 2023, extended the Third Party Stay to May 1, 2023, approved a key employee retention plan and granted a charge to secure the amounts expected to be paid thereunder, and increased the Administration Charge and the D&O Charge; and
 - (b) a Sale Approval Order (the “**Sale Approval Order**”) which, among other things, approved BBB Canada entering into an amended and restated consulting agreement (the “**Consulting Agreement**”) with a contractual joint venture party (the “**Consultant**”) to complete the liquidation of all merchandise (“**Merchandise**”) and owned furnishings, trade fixtures, equipment and improvements to real property (“**FF&E**”) located in BBB Canada’s retail stores, warehouse, and corporate office in Mississauga, and approved sale guidelines for the orderly liquidation (“**Sale Guidelines**”).
8. Since the granting of the ARIO and Sale Approval Order, BBB Canada has worked in good faith and with due diligence to, among other things:
- (a) commence and conduct the liquidation sale of all Merchandise and FF&E in all 65 Bed Bath & Beyond and buybuyBABY stores across Canada, in each case with the assistance of the Consultant and in accordance with the Sale Approval Order, the Consulting Agreement and the Sale Guidelines. Currently, the liquidation sale is proceeding as planned and is expected to conclude in all stores by no later than April 30, 2023;

- (b) pay all rent to landlords in accordance with the ARIO (i.e., twice monthly in equal payments on the first and fifteenth day of each month, in advance, but not in arrears);
- (c) reconcile all accounting matters each Wednesday for the prior calendar week with the assistance of the Consultant and in consultation with the Monitor;
- (d) provide all employees with either working notice of termination of their employment or with notice of termination effective immediately (depending on whether the employee was required to assist in the wind-down of the operations of BBB Canada);
- (e) as described further below, retain RVC as listing agent for and on behalf of BBB LP to facilitate the sale of leases and other property rights for some or all of BBB Canada's retail stores across Canada (the "**Leases**");
- (f) oversee RVC's efforts to market the Leases, including assisting with due diligence inquiries, assisting with the collection of information relevant to the Leases and population of RVC's virtual data room, engaging in meetings and calls with RVC, the Monitor and BBB Canada's professional advisors to review and accept successful bids, and responding to queries from landlords, potential purchasers and other stakeholders regarding the Leases;
- (g) negotiate and finalize the DKB Capital Agreement;
- (h) negotiate and finalize three separate lease surrender agreements (collectively, the "**Lease Surrender Agreements**"), all of which provide consideration at or below

the \$500,000 threshold provided in the ARIO for Court approval (and each of which is described further below);

- (i) in addition to the DKB Capital Agreement and the Lease Surrender Agreements, negotiate four (4) other lease assignment and assumption agreements which, as discussed further below, are substantially advanced but not yet finalized. BBB Canada is working diligently to conclude and execute these agreements before the hearing of its motion on April 11, 2023 so that approval of those further transactions can be sought at that time;
- (j) negotiate and finalize all applicable releases and consents with applicable landlords in order to facilitate the assignment, assumption and/or surrender of their respective Leases in accordance with the terms of the DKB Capital Agreement or the applicable Lease Surrender Agreement;
- (k) serve *Form 4 - Notices by Debtor Company to Disclaim or Resiliate an Agreement* on the applicable landlord for: (i) 16 Leases that were not the subject of any bids within the marketing process undertaken by RVC for the sale of the Leases, (ii) BBB Canada's corporate head office lease in Mississauga, Ontario; and (iii) the warehouse space leased by BBB Canada in Surrey, British Columbia; and
- (l) respond to numerous creditor and stakeholder inquiries regarding these CCAA proceedings.

B. Marketing and Sale Process for the Leases

(a) Retention of RVC as Listing Agent

9. The ARIO authorizes BBB Canada to dispose of redundant or non-material assets not exceeding \$500,000 in any one transaction or \$2.5 million in the aggregate and to apply to the Court for such approval, vesting or other Orders as may be necessary to consummate sale transactions for all or any part of the Property (as defined in the ARIO), all to permit BBB Canada to proceed with an orderly wind-down of the Business (as defined in the ARIO). The ARIO further authorizes and empowers BBB Canada to retain, among other persons, contractors, consultants, agents or advisors as it deems reasonably necessary or desirable in the ordinary course of business or to carry out the terms of the ARIO. A copy of the ARIO is attached hereto as **Exhibit "A"**.

10. In accordance with the ARIO, BBB Canada solicited proposals from consultants to act as listing agent with respect to a monetization process for the Leases. Three proposals were received by BBB Canada. Following a review of the proposals and in consultation with the Monitor, BBB Canada selected RVC to act as exclusive listing agent as its proposal was the most favourable to BBB Canada and its stakeholders. In particular: (a) the fee structure provided in RVC's bid was the lowest and most competitive of the bids submitted; (b) RVC has extensive local knowledge, landlord and retailer relationship network, and expertise regarding real estate market conditions and activities in Canada; and (c) RVC has existing knowledge of certain of BBB Canada's real estate portfolio from its principal's prior involvement with BBB Canada, having advised BBB Canada with respect to leasing matters in connection with its entry into Canada.

11. More specifically, RVC is a retail tenant focused brokerage and consultancy company based in Toronto, Ontario that specializes in the provision of brokerage and consulting services for retailers expanding and/or re-evaluating their operations both in North America and internationally. The principal of RVC, Mr. Sam Winberg, has over 35 years of experience in the Canadian commercial real estate industry. Mr. Winberg's prior company, Northwest Atlantic

(Canada) Inc. (“**Northwest**”), which he co-founded in 1991 (and sold to Jones Lange Lasalle in 2018), was Court-approved and acted as listing broker in the CCAA proceedings of Target Canada Co. and its various subsidiaries and affiliates (“**Target Canada**”). RVC has acted (and, in many cases, continues to act) as broker and consultant for numerous large retailers in Canada, including *TJX Canada (Winners, HomeSense and Marshalls), Ulta Beauty, Indigo, Sporting Life, and Whole Foods*.

12. In addition to his significant industry experience, Mr. Winberg is already familiar with many of BBB Canada’s leases and with its real estate portfolio as he (through Northwest) acted on behalf of BBB Canada in evaluating, negotiating and securing many of the Leases since the early 1990s, and continuing until approximately the mid- 2010’s.

13. On or about February 27, 2023, BBB LP entered into an Exclusive Listing Agreement with RVC for RVC to market and, where there was interest, facilitate the sale of the Leases across Canada as exclusive agent for and on behalf of BBB LP for the period of February 21, 2023 through April 21, 2023 (the “**Exclusive Listing Agreement**”). Attached as **Exhibit “B”** is a copy of the Exclusive Listing Agreement. All fees and other amounts owing to RVC under the Exclusive Listing Agreement will be paid by the Monitor from realized proceeds held by the Monitor in accordance with the terms of the Exclusive Listing Agreement and the ARIO.

(b) Marketing Process undertaken by RVC for the Leases

14. Upon execution of the Exclusive Listing Agreement, RVC commenced the process of marketing the Leases to, among others, commercial real estate brokerages, retail organizations operating in Canada, investment and private equity firms, and various other companies/organizations that may have potential interest in one or more of the Leases. Between

February 28 and March 14, 2023, fifty-three (53) parties were contacted by, or reached out directly to, RVC to discuss the process for bidding on one or more of the Leases. An additional five (5) parties contacted RVC between March 17 and 24, 2023 regarding the sale process.

15. In addition to the direct communications between RVC and interested parties, the opportunity to potentially acquire one or more of the Leases was also published in the Retail Insider and in Developers & Chains, in March 2023. Both the Retail Insider and Developers & Chains are news publications which focus on the Canadian retail industry.

16. In order to complete the marketing process in a cost effective and proportionate manner based on unknown recoveries¹, BBB Canada determined, in consultation with the Monitor, that the process should be undertaken in accordance with the authority granted to BBB Canada in the ARIO to proceed with an orderly wind-down of the Business (as defined in the ARIO), as opposed to seeking advance approval of the marketing and sale process.

17. Of the 58 parties contacted or who initiated contact with respect to the Leases, forty-four (44) parties executed a non-disclosure agreement (“**NDA**”) with BBB LP and the Monitor and were granted access to a data site containing copies of all lease files, including copies of all leases, waivers, and other relevant documentation. All 44 parties were also provided with a spreadsheet detailing the 65 Leases held by BBB LP in Canada. Each party was requested by RVC to confirm by no later than 5:00 p.m. on March 24, 2023 (the “**EOI Deadline**”) which leases/property rights it was interested in, the consideration it was willing to provide for same, and any conditions for the closing of a transaction. All parties were advised by RVC that as BBB Canada’s ongoing

¹ When the marketing process commenced in February 2023, BBB Canada did not know what level of interest (if any) there would be in various Leases, or the quantum of any purchase price consideration.

liquidation was expected to conclude by no later than April 30, 2023, time was of the essence and it was critical to BBB Canada that any potential transaction with respect to the Leases advance quickly. Attached as **Exhibits “C”** and **“D”** are copies of the standard form correspondence sent by RVC to participants in the process providing a copy of the NDA and discussing the bidding process.

18. Between February 28 and March 24, 2023, RVC and BBB Canada, in consultation with the Monitor, engaged with interested parties to respond to due diligence inquiries, provide additional information and documentation on request, and proactively address anticipated conditions to closing to proactively streamline the process for finalizing definitive documents. Between March 9 and 20, 2023, all participants who had signed NDAs prior to March 17, 2023 were provided with a spreadsheet detailing estimated common area maintenance charges and real estate taxes to assist them in formulating their respective bids. In providing the spreadsheet, RVC reminded all participants that any expressions of interest (“**EOI**”) must be received by no later than the EOI Deadline and advised that: (a) any transaction involving the Leases must be set forth in a binding agreement that is executed by applicable parties by no later than March 31, 2023; (b) the timing was being driven by the current schedule for BBB Canada’s Court-approved liquidation; and (c) BBB Canada was prepared to move quickly on suitable transactions to meet this deadline. Attached as **Exhibit “E”** is a copy of RVC’s correspondence (without attachments) to interested parties.

19. The process undertaken by BBB Canada to market and sell the Leases was, by necessity, abridged. This was done intentionally on account of the expected conclusion of the liquidation sale on April 30, 2023, and the need for BBB Canada to disclaim its interest in any Leases not subject to a sale transaction as soon as reasonably practicable to avoid paying additional rent. This

timing did not in any way compromise the integrity of the process. As at the EOI Deadline, BBB Canada received 19 separate EOIs from third parties for a transaction involving one or more of the Leases. Copies of the 19 EOIs were provided to the Monitor for its review and consideration.

20. Interest in the Leases was ultimately significant, which is reflective of the comprehensiveness of the process undertaken by RVC. The effectiveness of the process is, in BBB Canada's view, borne out by the results. Furthermore, the process was conducted in a manner that mitigated and balanced the risk of unnecessary post-liquidation rent costs being incurred.

(c) Results of the Marketing Process

21. The 19 EOIs received by BBB Canada were comprised of: (a) offers by landlords for the surrender of specific Leases; and (b) offers by third party retailers for the assignment and assumption of certain Leases. Many of the EOIs overlapped each other in the scope of the Leases proposed to be acquired thereunder. Accordingly, upon receipt of the EOIs, RVC (in consultation with BBB Canada and the Monitor) undertook extensive negotiations with applicable bidders to either narrow the scope of the Leases included in their bids to reduce overlap or, in the alternative, increase the consideration provided thereunder. Certain entities that submitted EOIs were ultimately unable to move forward with agreements to take an assignment of leases due to exclusive use restrictions in place at various shopping centres.

22. To date, the marketing process has culminated in the execution by BBB LP and BBBI of the DKB Capital Agreement and the three (3) Lease Surrender Agreements which, together, relate to 32 of BBB Canada's 65 Leases. The aggregate consideration payable under the DKB Capital Agreement and the Lease Surrender Agreements totals approximately \$2.5 million. At all times

throughout the process, the Monitor was kept apprised of the status and details of the ongoing negotiations.

23. In addition to the DKB Capital Agreement and the Lease Surrender Agreements, BBB Canada continues to negotiate four (4) other lease assignment and assumption agreements with third parties which, as at the swearing of this Affidavit, are substantially advanced but not yet finalized. BBB Canada intends to continue working diligently with the purchasers to finalize and execute each lease assignment and assumption agreement prior to the hearing of BBB Canada's motion on April 11, 2023 so that approval of those transactions can be sought at that time. Each additional assignment and assumption agreement will be provided to the Court and the Service List established in these CCAA proceedings as they become available. Attached as **Schedule "A"** to this Affidavit is a table showing all of BBB Canada's 65 Leases, the status of each Lease, and the applicable landlord, proposed assignee (to the extent confirmed), and consent requirement (if any) for each Lease.

24. Each of the three Lease Surrender Agreements and the DKB Capital Agreement are described further below.

(d) Lease Surrender Agreements

25. The three (3) Lease Surrender Agreements executed by BBB LP and BBBI are comprised of the following:

- (a) lease surrender agreement, dated April 2, 2023, with Yaletown Mini Storage Ltd. with respect to Store No. 2018 located at 1175 Woolridge Street, Coquitlam, BC;

- (b) lease surrender agreement, dated April 3, 2023, with Winston Argentia Developments Limited with respect to Store No. 2006 located at Winston Argentia Centre, 2975 Argentia Road, Mississauga, ON; and
- (c) lease surrender agreement, dated April 3, 2023, with Airport Highway & Developments Limited with respect to Store No. 2010 located at Woodhill Centre, 9125 Airport Road, Brampton, ON.

26. Pursuant to each of the Lease Surrender Agreements, BBB LP has agreed to surrender on an “as is, where is” basis, and the applicable landlord has agreed to accept a surrender of, all of BBB LP’s right, title and interest in and to the lease and the real property interests governed thereunder on May 1, 2023, or such later date as the parties may mutually agree. In exchange for BBB LP’s surrender of the applicable lease, each applicable landlord has agreed to:

- (a) pay cash consideration of an agreed sum to the Monitor, in trust; and
- (b) release BBB LP and BBBI (and each of their respective subsidiaries, affiliates, and associates and each of their respective members, partners, directors, officers, employees, agents, shareholders, successors and permitted assigns) from any and all claims relating to or arising from the lease, the real property interests, the premises, the property and/or the BBBI Indemnities granted with respect to the lease.

27. The Leases subject to the Lease Surrender Agreements were marketed by RVC as part of the same marketing process as all other Leases. The Lease Surrender Agreements represent the highest, non-overlapping, executable offer received within the marketing process for the 3 Leases.

28. As noted above, BBB Canada is not seeking any specific relief with respect to any of the Lease Surrender Agreements as the consideration payable both on a standalone basis and on an aggregate basis fall under the defined monetary thresholds in the ARIO. Accordingly, none of the Lease Surrender Agreements are conditional on the approval of the Court. Copies of the Lease Surrender Agreements have been provided to the Monitor and I understand that the Monitor supports BBB LP's execution and closing of same.

(e) DKB Capital Agreement

29. On March 28, 2023, BBB LP, BBBI and DKB Capital entered into the DKB Capital Agreement relating to the following twenty-nine (29) Leases:

Store No.	Address	Landlord
2001	Bayview Glen, 225 High Tech Road, Unit #1, Richmond Hill, ON	Yonge Bayview Holdings Inc.
2007	West Edmonton Mall, 8882 170 Street, Suite 2554, Edmonton, AB	West Edmonton Mall Property Inc.
2013	Brentwood Village (Calgary), 3630 Brentwood Road NW, Suite 600, Calgary, AB	RioCan Holdings (Brentwood Village) Inc.
2014	Green Lane Centre, 18126 Yonge Street, Newmarket, ON	Riotrin Properties (Newmarket) Inc.
2021	Smartcentres Cambridge, 70 Pine Bush Road, Unit 1, Cambridge, ON	Calloway REIT (Cambridge) Inc.
2022	306 Glenmore Trail, S.W., Calgary, AB	1431582 Alberta Inc.
2023	West Oaks Shopping Center, 32700 South Fraser Way, Unit 65, Abbotsford, BC	Z99999 Holdings, Ltd.
2024	Bell Front Shopping Centre, 366 North Front Street, Unit 25, Belleville, ON	Davpart Inc.
2025	Boardwalk Shopping Centre, 225 The Boardwalk, Unit #2, Kitchener, ON	The INCC Corp.
2026	Grant Crossing, 5487 Hazeldean Road, Unit 2, Stittsville, ON	Riotrin Properties (Hazeldean) Inc.

2027	1876 Cooper Road, Kelowna, BC	McIntosh Properties Ltd.
2028	Columbia Square Shopping Centre, 300-500 Notre Dame Drive, Kamloops, BC	S.R.V. Developments Ltd. and Kamloops Holdings Inc.
2031	Village Mall, 430 Topsail Road, St. John's, NF	Village Shopping Centre (2006) Inc.
2038	Queensway 427 Centre, 1602 The Queensway, Toronto, ON	Queensway 427 Centre Inc.
2043	Grasslands, 4855 Gordon Road, Regina, SK	Harvard Developments Inc.
2044	Station Square, 6200 McKay Avenue, Unit 240, Burnaby, BC	AB Metro Properties Ltd.
2045	Heritage Greene Shopping Center, 1783 Stone Church Road East, Unit 2, Stoney Creek, ON	Heritage Greene Development Corporation
2049	Riocan Colossus Centre, 67 Colossus Drive, Unit D10, Vaughan, ON	Riotrin Properties (Vaughan) Inc., Riotrin Properties (Vaughan 2) Inc., Riotrin Properties (Vaughan 3) Inc. and 1493130 Ontario Limited
2051	1740 West Broadway, Vancouver, BC	West Broadway Centre Ltd.
2052	Halifax Bayers Lake Centre, 208 Chain Lake Drive, Halifax, NS	Calloway REIT (Halifax) Ltd.
2053	Preston Crossing, 1707 Preston Avenue North, Saskatoon, SK	Preston West Properties Ltd.
2057	Township Shopping Centre, 22207 Macleod Trail Southeast, Calgary, AB	ROYOP (Legacy) Development Ltd.
3701	South Edmonton Common, 2017 98 th Street NW, Edmonton, AB	Canadian Property Holdings (Alberta) Inc. and Cameron Corporation
3702	Riocan Thicksen Ridge Centre, 1650 Victoria Street East, Unit #1, Whitby, ON	Riokim Holdings (Ontario) Inc.
3704	Langley City Square, Unit 110 – 19860 Langley Bypass, Langley, BC	Langley City Square Properties Ltd.
3706	West Edmonton Mall, 8882 170 Street, Suite 2049, Edmonton, AB	West Edmonton Mall Property Inc.
3708	Wonderland Gateway Centre, 3325 Wonderland Road, Unit #2, London, ON	1699259 Ontario Limited and 2573268 Ontario Inc.
3709	Brentwood Village (Calgary), 3630 Brentwood Road, Calgary, AB	RioCan Holdings (Brentwood Village) Inc.
2033	Mayfair Shopping Center, 775 Finlayson Street, Victoria, BC	Mayfair Shopping Centre Limited Partnership

30. A redacted copy of the DKB Capital Agreement is attached hereto as **Exhibit “F”**. An unredacted copy of the DKB Capital Agreement is attached hereto as **Confidential Exhibit “G”**. BBB Canada is requesting that the unredacted copy of the DKB Capital Agreement be sealed and not form part of the court record until the earlier of: (a) the closing of the DKB Capital Agreement, (ii) disclaimer of the Leases subject to the DKB Capital Agreement, or (iii) further order of this Honourable Court. The unredacted copy of the DKB Capital Agreement contains commercially sensitive information regarding the allocation of the consideration paid by DKB Capital for each Lease and associated FF&E purchased thereunder. Publication or dissemination of the consideration payable for the assignment of the Leases would pose a serious risk to the commercial interests of BBB Canada and its stakeholders should the DKB Capital Agreement fail to close and BBB Canada decide to re-offer the Leases to those third parties who submitted EOIs but were not deemed the successful bidder with respect to the applicable Lease.

31. Key terms of the DKB Capital Agreement include the following:

- (a) BBB LP agrees to assign and transfer, and DKB Capital agrees to assume, all of BBB LP’s right, title and interest in and to: (i) each Assigned Lease (as defined below) and the Premises demised pursuant to the Assigned Leases (the “**Assigned Premises**”) on as “as is, where is” basis, including all related rights, benefits and advantages contained in each Assigned Lease; (ii) FF&E and Trade Fixtures (as defined in the DKB Capital Agreement) existing as of March 28, 2023 at premises which are Assigned Premises (the “**Assigned Assumed Location Assets**”); and (iii) FF&E and Trade Fixtures existing as of March 28, 2023 at premises which are not Assigned Premises and are expressly listed in Schedule “C” to the DKB Capital Lease (the “**Assigned Non-Assumed Location Assets**”);

- (b) “Assigned Leases” are comprised of all Leases listed in the DKB Capital Agreement that: (i) do not require the consent of the landlord to the assignment and do not require prior notice to the landlord of the assignment, or that require prior notice but do not provide the landlord with any termination right or entitlement to a longer notice period than was actually provided to the landlord in respect of the assignment (collectively, the “**No-Consent Leases**”); and (ii) do require landlord consent for the assignment and such consent has been obtained by April 11, 2023 (each, an “**Assigned Lease**”);
- (c) DKB Capital paid to the Monitor, in trust, cash consideration in the aggregate amount of \$1,772,264.34, allocated among the Leases subject to the DKB Capital Agreement (\$1.1 million), the FF&E and Trade Fixtures associated with the 29 Leases (\$457,194.09), and the Assigned Non-Assumed Location Assets (\$215,070.25). The consideration payable by DKB Capital for the two categories of FF&E and Trade Fixtures was negotiated directly with the Consultant and the agreed purchase price was then included in the DKB Capital Agreement;
- (d) The consideration for the 29 Leases and associated FF&E and Trade Fixtures is then further allocated among each of the 29 Leases. Should any of the 29 Leases not become “Assigned Leases” because the consent of the landlord has not been obtained by April 11, 2023 or an assignment Order has not been granted by the Court, BBB Canada may elect to deem such Leases to be “Unassigned Leases”, will be excluded from the scope of the DKB Capital Agreement, and all cash consideration allocated to such “Unassigned Leases” will be returned to DKB Capital. DKB Capital may elect by no later than April 13, 2023 to also exclude

from the scope of the DKB Agreement any FF&E and Trade Fixtures at any Unassigned Lease, in which case all cash consideration allocated to such FF&E and Trade Fixtures also will be returned to DKB Capital;

- (e) the DKB Capital Agreement, in respect of each Assigned Lease, is conditional upon each landlord providing a release (in a form acceptable to BBB LP and BBBI) on or before April 11, 2023 (the “**Lease Release Date**”) releasing BBB LP and BBBI of all obligations under the Lease and the associated BBBI Indemnity. In the event a landlord release is not received prior to the Lease Release Date, either: (i) BBB LP may remove the Lease(s) from the list of Assigned Leases and refund the associated consideration to DKB Capital, or (ii) DKB Capital may provide an indemnity to BBB LP from an affiliate of DKB Capital acceptable to BBB LP indemnifying and saving BBB LP harmless from any and all claims arising from, among other things, non-payment of rents and other amounts due and owing under the Lease or the non-observance or non-performance of any terms, obligations or covenants under the Lease, in each case during the period following the closing date;²
- (f) DKB Capital will be responsible for all Cure Costs (as defined in the DKB Capital Agreement) for non-monetary defaults under the Assigned Leases and the landlord releases shall provide that DKB Capital is released from all Cure Costs for

² BBB Canada has not removed any Leases from the list of Assigned Leases as at the swearing of this Affidavit.

monetary defaults, failing which the landlord consent will be deemed to have not been obtained;³

- (g) DKB Capital will arrange insurance with respect to access to the premises where the Assigned Non-Assumed Location Assets are located, and the removal of the Assigned Non-Assumed Location Assets will be completed in accordance with the Sale Approval Order and the Sale Guidelines; and
- (h) the closing date for the assignment and assumption of the Assigned Leases, Assigned Premises, and Assigned Assumed Location Assets is May 1, 2023. The closing date for the assignment and assumption of the Assigned Non-Assumed Location Assets is April 27, 2023.

32. The DKB Capital Agreement and the transactions detailed therein are subject to the approval of this Court. BBB Canada is seeking the proposed Order approving the DKB Capital Agreement. BBB Canada believes that the DKB Capital Agreement is in the best interests of BBB Canada and its stakeholders and the consideration paid in respect of transactions defined therein is fair and reasonable. The DKB Capital Agreement is the result of a comprehensive marketing process undertaken by RVC and significant negotiation by BBB Canada of the 19 EOIs received in order to eliminate overlap while maximizing the value of the Leases. The DKB Capital Agreement increases BBB Canada's realization of the value of its assets for the benefit of its stakeholders.

³ The proposed form of order contemplates that in the absence of a consensual release, the purchaser will be required to pay monetary cure costs other than rent, which is paid current.

33. As at the date of the swearing of this Affidavit, of the 29 Leases subject to the DKB Capital Agreement:

- (a) eight Leases are No-Consent Leases (Store Nos. 2027, 2031, 2044, 2045, 2051, 2057, 3704 and 3708);
- (b) six landlords have provided the required landlord consents to the assignments of the applicable Lease and releases of BBB LP and BBBI (Store Nos. 2001, 2007, 2024, 2028, 3701 and 3706) and two landlords under a No-Consent Lease have provided a release of BBB LP and BBBI; and
- (c) based on discussions to date, BBB Canada anticipates that landlords in respect of eight leases for which consents have not be obtained will not oppose an assignment of such Leases to DKB Capital pursuant to an Order under section 11.3 of the CCAA.

34. BBB Canada will continue to work with all landlords to obtain the necessary consents and releases for the remaining 7 Leases subject to the DKB Capital Agreement and will provide an update to the Court prior to, or at, at hearing of BBB Canada's motion on April 11, 2023. If certain consents/waivers are not finalized by this date, BBB Canada may seek an Order assigning BBB Canada's rights, title and obligations under the Unassigned Leases to DKB Capital.

35. DKB Capital is an affiliate of Putman Investments which owns retail brands like *Toys "R" Us*, *Babies "R" Us Canada*, *Sunrise Records*, *For Your Entertainment Ltd.* and *HMV*. DKB Capital has covenanted that it has the financial ability to close the transaction, pay all rent at the times and in the manner provided in each Lease, make all payments covenanted to be paid by the

tenant under each Lease, and otherwise assume, observe, perform and be liable for the performance of each term, covenant, provision, condition liability, obligation and agreement contained in the Leases that it will assume from BBB LP.

36. DKB Capital has paid all consideration payable under the DKB Capital Agreement to the Monitor in trust, to be held in escrow. No amendments to the permitted use restrictions, go dark rights, or other provisions are being sought by BBB Canada or DKB Capital that would prejudice any landlord rights.

37. An assignment of the twenty-nine (29) Leases to DKB Capital, whether pursuant to the terms of the Lease, with the consent of the applicable landlord, or pursuant to section 11.3 of the CCAA, will maximize the realizable value of BBB Canada's estate for the benefit of its stakeholders. If the assignments are not completed, a portion of this realizable value will be lost. The Leases are assets of BBB Canada and the transactions proposed under the DKB Capital Agreement will allow BBB Canada to obtain monetary value for such assets for the benefit of its stakeholders.

38. RVC and BBB Canada believe that the consideration paid by DKB Capital for the applicable Leases is fair and reasonable in the circumstances. It represents the highest, non-overlapping, executable offer received within the marketing process for the 29 Leases. I am advised by the Monitor and believe that the Monitor agrees with this assessment.

39. I am further advised by the Monitor and believe that the Monitor supports BBB Canada's request for approval of the DKB Capital Agreement.

SWORN BEFORE ME over video
teleconference this 5th day of April, 2023
pursuant to O. Reg 431/20, Administering
Oath or Declaration Remotely. The affiant was
located in the City of Union, in the State of
New Jersey while the Commissioner was
located in the City of Toronto, in the Province
of Ontario.



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



Wade Haddad

Schedule "A"

No.	Store #	Property Address	Landlord	Status of Lease	Assignee	Consent/ Waiver/ Amendment Required ⁴	Status of Consent/ Waiver/ Amendment
1.	2001	Bayview Glen, 225 High Tech Road, Unit #1, Richmond Hill, ON	Yonge Bayview Holdings Inc.	Assign	11607987 Canada Inc. dba DKB Capital	Consent and Waiver	Granted
2.	2002	200-240 North Service Road, Oakville, ON	Sun Life Assurance Company of Canada	Disclaim			
3.	2003	Ottawa Train Yards, 500 Terminal Avenue, Ottawa, ON	1663321 ONTARIO INC. and 1414614 ONTARIO INC.	Under Negotiation	Under Negotiation	Waiver	Outstanding
4.	2004	Highway 401 and Thickson Road South, Whitby, ON	RioKim Holdings (Ontario) Inc.	Disclaim			
5.	2006	Winston Argentia Centre, 2975 Argentia Road, Mississauga, ON	Winston Argentia Developments Limited	Surrender			
6.	2007	West Edmonton Mall, 8882 170 Street, Suite 2554, Edmonton, AB	West Edmonton Mall Property Inc.	Assign	11607987 Canada Inc. dba DKB Capital	Consent	Granted
7.	2008	137 Avenue NW, Edmonton, AB	Anthem Crestpoint North Town Shopping Centre Ltd.	Disclaim			
8.	2009	Park Place, 80 Concert Way, Unit 1, Barrie, ON	North American (Park Place) Corporation and 9613714 Canada Inc.	Under Negotiation	Under Negotiation	Waiver and Amendment	Outstanding

⁴ "Consent" means that consent to assign is required from the landlord; "Waiver" means waiver of termination right or notice period is required from the landlord; "Amendment" means that an amendment to the lease is required from the landlord; and "N/A" means no Consent, Waiver or Amendment is required.

No.	Store #	Property Address	Landlord	Status of Lease	Assignee	Consent/ Waiver/ Amendment Required ⁴	Status of Consent/ Waiver/ Amendment
9.	2010	Woodhill Centre, 9125 Airport Road, Brampton, ON	Airport Highway & Developments Limited and Woodhill Equities Inc.	Surrender			
10.	2011	Barrhaven Town Centre, 3777 Strandherd Drive, Barrhaven, ON	Sun Life Assurance Company of Canada, Barrhaven Town Centre Inc. and 8750840 Canada Inc.	Under Negotiation	Under Negotiation	Waiver	Outstanding
11.	2012	Rocky River in the Province of Alberta, Calgary, AB	CrossIron Mills Holdings Inc.	Disclaim			
12.	2013	Brentwood Village (Calgary), 3630 Brentwood Road NW, Suite 600, Calgary, AB	RioCan Holdings (Brentwood Village) Inc.	Assign	11607987 Canada Inc. dba DKB Capital	Waiver	Consent to section 11.3 Assignment
13.	2014	Green Lane Centre, 18126 Yonge Street, Newmarket, ON	Riotrin Properties (Newmarket) Inc.	Assign	11607987 Canada Inc. dba DKB Capital	Waiver	Consent to section 11.3 Assignment
14.	2015	45 Lemlair Row, Dartmouth, NS	Dartmouth Crossing 4 Limited	Disclaim			
15.	2016	98th Street, Edmonton, AB	Collectively, Cameron Corporation and Canadian Property Holdings (Alberta) Inc.	Disclaim			
16.	2017	193 Minna Jane Drive, Charlottetown, PEI	Scott's Real Estate Limited Partnership	Disclaim			
17.	2018	1175 Woolridge Street, Coquitlam, BC	Yaletown Mini Storage Ltd.	Surrender			
18.	2019	845 Marine Drive, North Vancouver, BC	TPP Investments II Inc. and PSS Investments II Inc.	Under Negotiation	Under Negotiation	Waiver and Amendment	Outstanding

No.	Store #	Property Address	Landlord	Status of Lease	Assignee	Consent/ Waiver/ Amendment Required ⁴	Status of Consent/ Waiver/ Amendment
19.	2020	Southpointe Common, 5001 19th Street, Unit 850, Red Deer, AB	Southpointe Plaza Inc.	Under Negotiation	Under Negotiation	Consent and Amendment	Outstanding
20.	2021	Smartcentres Cambridge, 70 Pine Bush Road, Unit 1, Cambridge, ON	Calloway REIT (Cambridge) Inc.	Assign	11607987 Canada Inc. dba DKB Capital	Consent	Consent to section 11.3 Assignment
21.	2022	306 Glenmore Trail, S.W., Calgary, AB	1431582 Alberta Inc.	Assign	11607987 Canada Inc. dba DKB Capital	Waiver	Outstanding
22.	2023	West Oaks Shopping Center, 32700 South Fraser Way, Unit 65, Abbotsford, BC	Z99999 Holdings, Ltd.	Assign	11607987 Canada Inc. dba DKB Capital	Waiver	Outstanding
23.	2024	Bell Front Shopping Centre, 366 North Front Street, Unit 25, Belleville, ON	366 North Front Belleville Holdings Inc.	Assign	11607987 Canada Inc. dba DKB Capital	Waiver	Granted
24.	2025	Boardwalk Shopping Centre, 225 The Boardwalk, Unit #2, Kitchener, ON	The INCC Corp.	Assign	11607987 Canada Inc. dba DKB Capital	Waiver	Outstanding
25.	2026	Grant Crossing, 5487 Hazeldean Road, Unit 2, Stittsville, ON	Riotrin Properties (Hazeldean) Inc.	Assign	11607987 Canada Inc. dba DKB Capital	Waiver	Consent to section 11.3 Assignment
26.	2027	1876 Cooper Road, Kelowna, BC	McIntosh Properties Ltd.	Assign	11607987 Canada Inc. dba DKB Capital	N/A	N/A
27.	2028	Columbia Square Shopping Centre, 300- 500 Notre Dame Drive, Kamloops, BC	S.R.V. Developments Ltd. and Kamloops Holdings Inc.	Assign	11607987 Canada Inc. dba DKB Capital	Waiver	Granted
28.	2029	15 Trinity Ave. Building C, Fredericton, NB	Riotrin Properties (Fredericton) Inc.	Disclaim			

No.	Store #	Property Address	Landlord	Status of Lease	Assignee	Consent/ Waiver/ Amendment Required ⁴	Status of Consent/ Waiver/ Amendment
29.	2030	Emerald Hills Centre, 5000 Emerald Drive, Sherwood Park, AB	1445006 Alberta Inc.	Under Negotiation	Under Negotiation	Amendment	N/A
30.	2031	Village Mall, 430 Topsail Road, St. John's, NF	Village Shopping Centre (2006) Inc.	Assign	11607987 Canada Inc. dba DKB Capital	N/A	N/A
31.	2033	Mayfair Shopping Center, 775 Finlayson Street, Victoria, BC	Mayfair Shopping Centre Limited Partnership	Assign	11607987 Canada Inc. dba DKB Capital	Waiver	Outstanding
32.	2034	3995 Highway #7 East, Markham, ON	1826997 Ontario Inc.	Disclaim			
33.	2035	Westwood Power Centre, 3165 Wonderland Road South, Unit #1, London, ON	Wonderland Power Centre Inc.	Under Negotiation	Under Negotiation	Amendment	N/A
34.	2036	79 Wyse Street Unit 300, Moncton, NB	Mapleton Holdings Inc.	Disclaim			
35.	2037	Westgate Home Centre, 101-11517 Westgate Drive, Grande Prairie, AB	1651051 Alberta Ltd.	Under Negotiation	Under Negotiation	Amendment	N/A
36.	2038	Queensway 427 Centre, 1602 The Queensway, Toronto, ON	Queensway 427 Centre Inc.	Assign	11607987 Canada Inc. dba DKB Capital	Waiver	Outstanding
37.	2039	3-221 Henry Street Brantford Bell Centre, Brantford, ON	2276844 Ontario Limited	Disclaim			
38.	2040	Polo Park Shopping Centre, 140 - 600 Empress Street, Winnipeg, MB	Ontrea Inc.	Under Negotiation	Under Negotiation	Waiver	Outstanding
39.	2041	2220-4751 McClelland Road, Richmond, BC	First Richmond North Shopping Centres Limited	Disclaim			

No.	Store #	Property Address	Landlord	Status of Lease	Assignee	Consent/ Waiver/ Amendment Required ⁴	Status of Consent/ Waiver/ Amendment
40.	2042	Collingwood Centre, 55 Mountain Road, Collingwood, ON	Canadian Tire Properties Inc.	Under Negotiation	Under Negotiation	Waiver	Outstanding
41.	2043	Grasslands, 4855 Gordon Road, Regina, SK	Harvard Developments Inc.	Assign	11607987 Canada Inc. dba DKB Capital	Consent	Outstanding
42.	2044	Station Square, 6200 McKay Avenue, Unit 240, Burnaby, BC	AB Metro Properties Ltd.	Assign	11607987 Canada Inc. dba DKB Capital	N/A	N/A
43.	2045	Heritage Greene Shopping Center, 1783 Stone Church Road East, Unit 2, Stoney Creek, ON	Heritage Greene Development Corporation	Assign	11607987 Canada Inc. dba DKB Capital	N/A	N/A
44.	2046	#10-3829 Mayor Magrath Drive South, Lethbridge, AB	Coulee Creek Common Ltd.	Disclaim			
45.	2047	40 145 East Hills Blvd, SE, Calgary, AB	Riotrin Properties (Calgary East) Inc. and 2185278 Ontario Limited	Disclaim			
46.	2048	Riocan Centre Kingston, 616 Gardiners Road, Suite 1, Kingston, ON	Riotrin Properties (Kingston) Inc.	Under Negotiation	Under Negotiation	Waiver and Amendment	Outstanding
47.	2049	Riocan Colossus Centre, 67 Colossus Drive, Unit D10, Vaughan, ON	Riotrin Properties (Vaughan) Inc., Riotrin Properties (Vaughan 2) Inc., Riotrin Properties (Vaughan 3) Inc. and 1493130 Ontario Limited	Assign	11607987 Canada Inc. dba DKB Capital	Waiver	Consent to section 11.3 Assignment
48.	2050	Langley City Square, Unit 100 - 19860	Langley City Square Properties Ltd.	Under Negotiation	Under Negotiation	Amendment	Outstanding

No.	Store #	Property Address	Landlord	Status of Lease	Assignee	Consent/ Waiver/ Amendment Required ⁴	Status of Consent/ Waiver/ Amendment
		Langley Bypass, Langley, BC					
49.	2051	1740 West Broadway, Vancouver, BC	West Broadway Centre Ltd.	Assign	11607987 Canada Inc. dba DKB Capital	N/A	N/A
50.	2052	Halifax Bayers Lake Centre, 208 Chain Lake Drive, Halifax, NS	Calloway REIT (Halifax) Ltd.	Assign	11607987 Canada Inc. dba DKB Capital	Consent	Consent to section 11.3 Assignment
51.	2053	Preston Crossing, 1707 Preston Avenue North, Saskatoon, SK	Preston West Properties Ltd.	Assign	11607987 Canada Inc. dba DKB Capital	Waiver	Outstanding
52.	2054	Medicine Hat Mall, 107-1820 Strachan Road, Medicine Hat, AB	Skyline Retail Real Estate Holdings Inc.	Under Negotiation	Under Negotiation	Amendment	N/A
53.	2056	Sudbury New Millennium Centre, 1499 Marcus Drive, Sudbury, ON	RioKim Holdings (Ontario) Inc.	Under Negotiation	Under Negotiation	Waiver and Amendment	Outstanding
54.	2057	Township Shopping Centre, 22207 Macleod Trail Southeast, Calgary, AB	ROYOP (Legacy) Development Ltd.	Assign	11607987 Canada Inc. dba DKB Capital	N/A	N/A
55.	3701	South Edmonton Common, 2017 98th Street NW, Edmonton, AB	Canadian Property Holdings (Alberta) Inc. and Cameron Corporation	Assign	11607987 Canada Inc. dba DKB Capital	Waiver	Granted
56.	3702	Riocan Thickson Ridge Centre, 1650 Victoria Street East, Unit #1, Whitby, ON	Riokim Holdings (Ontario) Inc.	Assign	11607987 Canada Inc. dba DKB Capital	Waiver	Consent to section 11.3 Assignment
57.	3703	Colossus, 67 Colossus Drive, Woodbridge, ON	Riotrin Properties (Vaughan 2) Inc., Riotrin Properties	Under Negotiation	Under Negotiation	Waiver	Outstanding

No.	Store #	Property Address	Landlord	Status of Lease	Assignee	Consent/ Waiver/ Amendment Required ⁴	Status of Consent/ Waiver/ Amendment
			(Vaughan 3) Inc., 1493130 Ontario Limited, and Ontario, Riotrin Properties (Vaughan) Inc.				
58.	3704	Langley City Square, Unit 110 - 19860 Langley Bypass, Langley, BC	Langley City Square Properties Ltd.	Assign	11607987 Canada Inc. dba DKB Capital	N/A	N/A
59.	3705	Ottawa Trainyards, 595 Industrial Ave, Unit 2, Ottawa, ON	1663321 Ontario Inc.	Under Negotiation	Under Negotiation	Consent and Amendment	Outstanding
60.	3706	West Edmonton Mall, 8882 170 Street, Suite 2049, Edmonton, AB	West Edmonton Mall Property Inc.	Assign	11607987 Canada Inc. dba DKB Capital	Consent	Granted
61.	3707	870 St. James Street, Winnipeg, MB	Oxbow Holdings Ltd.	Disclaim			
62.	3708	Wonderland Gateway Centre, 3325 Wonderland Road, Unit #2, London, ON	1699259 Ontario Limited and 2573268 Ontario Inc.	Assign	11607987 Canada Inc. dba DKB Capital	N/A	N/A
63.	3709	Brentwood Village (Calgary), 3630 Brentwood Road, Calgary, AB	RioCan Holdings (Brentwood Village) Inc.	Assign	11607987 Canada Inc. dba DKB Capital	Waiver	Consent to section 11.3 Assignment
64.	3711	Oakville Place, 240 Leighland Avenue, Unit M6a, Oakville, ON	RioCan Holdings (Oakville Place) Inc.	Under Negotiation	Under Negotiation	Waiver and Amendment	Outstanding
65.	3712	80 Longview Common SE #710, Calgary, AB	ROYOP (Legacy) Development Ltd.	Disclaim			

THIS IS **EXHIBIT “A”** REFERRED TO IN THE AFFIDAVIT OF WADE HADDAD SWORN BEFORE ME over video teleconference this 5th day of April, 2023 pursuant to O. Reg 431/20, Administering Oath or Declaration Remotely. The affiant was located in the City of Union, in the State of New Jersey while the Commissioner was located in the City of Toronto, in the Province of Ontario.



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



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**")

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 cooperate 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

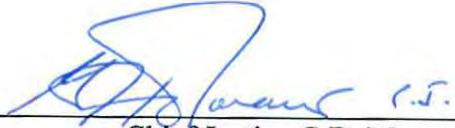
51. **THIS COURT ORDERS** that the BBB Entities or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their powers and duties under this Order or in the interpretation or application of this Order.

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

OSLER, HOSKIN & HARCOURT, LLP
P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Marc Wasserman (LSO# 44066M)
Shawn Irving (LSO# 50035U)
Dave Rosenblat (LSO# 64586K)
Emily Paplawski (LSA# 17693)

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

Lawyers for the Applicant

THIS IS **EXHIBIT “B”** REFERRED TO IN THE AFFIDAVIT OF WADE HADDAD SWORN BEFORE ME over video teleconference this 5th day of April, 2023 pursuant to O. Reg 431/20, Administering Oath or Declaration Remotely. The affiant was located in the City of Union, in the State of New Jersey while the Commissioner was located in the City of Toronto, in the Province of Ontario.



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

EXCLUSIVE LISTING AGREEMENT

TO: Retail Ventures CND Inc.
(herein referred to as the "Agent")

WE: Bed Bath & Beyond Canada L.P.
(herein referred to as the "Retailer")

RE: Schedule 1 Attached
(herein referred to as the "Properties")

In consideration of the AGENT's agreement to attempt to facilitate the sale of leases or other property rights as mandated by the RETAILER for the PROPERTIES (collectively, the "LEASE RIGHTS"), the RETAILER agrees to give the AGENT the sole and exclusive right to market the LEASE RIGHTS in Canada for the period of February 21, 2023 through April 21, 2023 (the "LISTING PERIOD").

The LEASE RIGHTS shall be marketed by telephone, email, mail, industry publications and on-line services, which shall be in form and substance satisfactory to RETAILER. During this period, the RETAILER agrees not to market the LEASE RIGHTS, either directly or indirectly to any party. Any interest that a RETAILER receives from a THIRD PARTY will be forwarded to the AGENT. The RETAILER may terminate this Agreement upon 30 days written notice to the AGENT.

Should the AGENT require access to a property in its efforts to market the sale of the Lease, RETAILER shall provide contact to the appropriate party to coordinate access.

The RETAILER agrees to pay the AGENT a monthly Administration fee of \$25,000 + HST each for the two months of this assignment. The first monthly Administration fee shall be paid to the AGENT at the commencement of this assignment and the second shall occur 30 days later. AGENT shall provide appropriate invoicing as directed to RETAILER and Alvarez & Marsal Canada Inc. in its capacity as court-appointed monitor of the RETAILER (the "MONITOR").

In consideration of procuring one or more binding transactions, unconditional and acceptable to the RETAILER and the MONITOR that has closed, for the disposition of the LEASE RIGHTS during the LISTING PERIOD, the RETAILER agrees to pay the AGENT a commission based on the following sliding scale per PROPERTY or in case of a bulk sales the aggregate purchase price. The RETAILER shall be under no obligation to accept any offer, transaction or proposal presented.

SIX (6%) of the value paid of the first \$1,000,000.00 in consideration. FIVE (5%) of the value paid of the second \$1,000,000.00 in consideration and TWO AND A HALF (2.5%) of the remaining value paid. All commissions shall be subject to HST paid by the

RETAILER. AGENT shall provide appropriate invoicing to RETAILER and MONITOR as directed. If the AGENT works in conjunction with a Co-Operating Broker, the AGENT and the RETAILER, with the consent of the MONITOR, on a case by case basis, may agree to increase the above compensation. In such case, the AGENT will be responsible for paying such Co-Operating Broker fifty percent (50%) of the applicable commission.

Commission plus applicable GST/HST shall be due and payable to the AGENT upon the closing of the transaction.

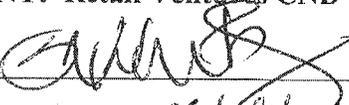
The AGENT shall ensure that a minimum of 24 hours notice is given to the RETAILER for any requested property tours or site visits. Should the RETAILER be operating from the PROPERTY in such circumstances, the AGENT shall insist on strict confidentiality by the visiting party.

RETAILER acknowledges that AGENT may have existing relationships or representative responsibilities to entities which may be prospective tenants or purchasers of the LEASE RIGHTS. RETAILER hereby consents to the dual representation which may be created by the presentation of PROPERTIES to such entities. In the event that any situation arises which may, or in the future could, involve such dual representation, AGENT shall so notify RETAILER before the commencement of the negotiations in question. In no event shall the AGENT disclose any confidential information concerning one party to the other.

Notices required under this Agreement shall be in writing and deemed to be properly served if personally delivered, sent by certified or registered mail (return receipt requested) or by email that is acknowledged received by the other party. Notices to AGENT shall be sent to 100 Lombard Street, Suite 101 Toronto, Ontario M5C-1M3 **Sam Winberg, Principal/Broker or Justin Pearlstein Principal**. Notices to RETAILER shall be sent to Jon-Michael Roman by email at Jon-Michael.Roman@bedbath.com.

The undersigned represent and warrant that they have the full authority to sign this Agreement on behalf of their respective companies and affirm that this Agreement binds such party.

AGENT: Retail Ventures CND Inc. (Retail CND)RETAILER:

Per: 

Per: _____

Name: Sam Winberg

Name: _____

Title: Broker

Title: _____

Date: February 21, 2023

Date: _____

RETAILER. AGENT shall provide appropriate invoicing to RETAILER and MONITOR as directed. If the AGENT works in conjunction with a Co-Operating Broker, the AGENT and the RETAILER, with the consent of the MONITOR, on a case by case basis, may agree to increase the above compensation. In such case, the AGENT will be responsible for paying such Co-Operating Broker fifty percent (50%) of the applicable commission.

Commission plus applicable GST/HST shall be due and payable to the AGENT upon the closing of the transaction.

The AGENT shall ensure that a minimum of 24 hours notice is given to the RETAILER for any requested property tours or site visits. Should the RETAILER be operating from the PROPERTY in such circumstances, the AGENT shall insist on strict confidentiality by the visiting party.

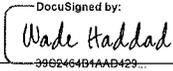
RETAILER acknowledges that AGENT may have existing relationships or representative responsibilities to entities which may be prospective tenants or purchasers of the LEASE RIGHTS. RETAILER hereby consents to the dual representation which may be created by the presentation of PROPERTIES to such entities. In the event that any situation arises which may, or in the future could, involve such dual representation, AGENT shall so notify RETAILER before the commencement of the negotiations in question. In no event shall the AGENT disclose any confidential information concerning one party to the other.

Notices required under this Agreement shall be in writing and deemed to be properly served if personally delivered, sent by certified or registered mail (return receipt requested) or by email that is acknowledged received by the other party. Notices to AGENT shall be sent to 100 Lombard Street, Suite 101 Toronto, Ontario M5C-1M3 **Sam Winberg, Principal/Broker or Justin Pearlstein Principal**. Notices to RETAILER shall be sent to Jon-Michael Roman by email at Jon-Michael.Roman@bedbath.com.

The undersigned represent and warrant that they have the full authority to sign this Agreement on behalf of their respective companies and affirm that this Agreement binds such party.

AGENT: Retail Ventures CND Inc. (Retail CND)RETAILER:

Per: _____

Per:  _____

Name: _____

Name: Wade Haddad

Title: _____

Title: SVP Real Estate and Construction

Date: _____

Date: 2/27/2023

THIS IS **EXHIBIT “C”** REFERRED TO IN THE AFFIDAVIT OF WADE HADDAD SWORN BEFORE ME over video teleconference this 5th day of April, 2023 pursuant to O. Reg 431/20, Administering Oath or Declaration Remotely. The affiant was located in the City of Union, in the State of New Jersey while the Commissioner was located in the City of Toronto, in the Province of Ontario.



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

From: Emma Barker <emma@retailcnd.com>
Sent: Thursday, March 02, 2023 10:54 AM
To: [REDACTED]
Cc: [REDACTED] Sam Winberg; Justin Pearlstein
Subject: RE: Bed Bath & Beyond
Attachments: BBBY - Form NDA - Canada Leases-2-28-2023.DOCX

Hi [REDACTED],

Attached please find the NDA dated February 28, 2023, provided to me by Bed Bath & Beyond Canada L.P. and BBB Canada Ltd.

It is a requirement for interested parties to execute this NDA and return it to me for execution by both Bed Bath & Beyond and Alvarez & Marsal the Monitor. We hope to be able to return the fully executed NDA to you within 24 hours of receipt.

When we return the fully executed agreement, we will also attach a spreadsheet that details on the 65 (54 Bed Bath & Beyond and 11 Buy Buy Baby) Leases. We have been assured that all leases are in good order and all rents have been paid.

If you require further information, we will share a DropBox link with you to the lease files of properties you have interest in. As the NDA states, you are to satisfy yourself as to the accuracy of the information provided in the spreadsheet.

We look forward to receiving this document back at your earliest convenience.

The cutoff date to have binding Lease assignments agreements in place is March 30th. Not the length of deadline we are used to working with, but these are the conditions as dictated by the Courts.

Happy to answer any questions you may have. If we do not have the answer, we will endeavor to find the answer and report back.

Thanks.
Emma Barker
Executive Assistant

CC: Sam Winberg and Justin Pearlstein



Emma Barker | Executive Assistant – Deal Coordinator

a: 100 Lombard Street, Suite 101 Toronto, ON M5C 1M3

e: emma@retailcnd.com **w:** www.retailcnd.com

o: 416-583-1990

RETAIL VENTURES CND INC. BROKERAGE
Your Retail Real Estate Partner

THIS IS **EXHIBIT “D”** REFERRED TO IN THE AFFIDAVIT OF WADE HADDAD SWORN BEFORE ME over video teleconference this 5th day of April, 2023 pursuant to O. Reg 431/20, Administering Oath or Declaration Remotely. The affiant was located in the City of Union, in the State of New Jersey while the Commissioner was located in the City of Toronto, in the Province of Ontario.



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

From: Emma Barker <emma@retailcnd.com>
Sent: Friday, March 03, 2023 9:02 AM
To: [REDACTED]
Cc: Sam Winberg; Justin Pearlstein
Subject: RE: Bed Bath & Beyond Ottawa
Attachments: BBB and BBB Canada Stores with Rents and Options 2-28-2023.xlsx

Hi [REDACTED],

Thank you for completing the NDA and returning it back to us. As previously mentioned, we are attaching a spreadsheet of all 65 available leases, complete with terms, rents, Option rents, etc. Below is the Dropbox link to the applicable lease files (which include leases, waivers, and other relevant documents). We will also forward you an executed copy of the NDA from BBB, once we receive it.

<https://www.dropbox.com/sh/9nqlcgoo5sqoxze/AAA8jDxcTwvg0UTD21fvldBTa?dl=0>

As you may be aware, the company is currently liquidating with an estimated end date of April 30, 2023. In light of this, time is of the essence, and it will be critical to advance any potential transaction quickly.

Please confirm your interest, including (i) which leases/property rights you are interested in, (ii) the consideration you are willing to provide for same, and (iii) any conditions for the closing of a transaction, as soon as possible. Following receipt of such details, and assuming the proposed terms are acceptable, the company's counsel will provide you with a form of transaction agreement contemplating such terms on an expedited basis. A binding agreement must be signed by no later than March 31 given the current schedule for the company's liquidation (however, closing can occur after such date). The company and its counsel are prepared to move quickly on a suitable transaction to meet this time limitation.

Sam and Justin are available to discuss further, should you have any questions.

Thank you,



Emma Barker | Executive Assistant – Deal Coordinator

a: 100 Lombard Street, Suite 101 Toronto, ON M5C 1M3

e: emma@retailcnd.com **w:** www.retailcnd.com

o: 416-583-1990

RETAIL VENTURES CND INC. BROKERAGE

Your Retail Real Estate Partner

THIS IS **EXHIBIT “E”** REFERRED TO IN THE AFFIDAVIT OF WADE HADDAD SWORN BEFORE ME over video teleconference this 5th day of April, 2023 pursuant to O. Reg 431/20, Administering Oath or Declaration Remotely. The affiant was located in the City of Union, in the State of New Jersey while the Commissioner was located in the City of Toronto, in the Province of Ontario.



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

From: Emma Barker <emma@retailcnd.com>
Sent: Friday, March 10, 2023 8:42 AM
To: [REDACTED]
Cc: Sam Winberg; Justin Pearlstein
Subject: RE: BBB NDA
Attachments: Canada CAM&Tax BBB Leases.pdf

Hi [REDACTED],

Further to my previous email, you are reminded that any transaction involving the company's lease(s)/property rights must be set forth in a binding agreement that is executed by applicable parties by no later than March 31, 2023. This timing is driven by the current schedule for the company's Court-approved liquidation.

The company is prepared to move quickly on suitable transactions to meet this deadline. In light of the deadline and the timing needed to finalize documentation, we ask that any expressions of interest be received by no later than March 24, 2023, at 5:00 pm. Ideally, expressions of interest will be provided well in advance of this time to provide additional time to settle documentation and clarify any related matters. As noted previously, your expression of interest must set out, at a minimum: (i) which leases/property rights you are interested in, (ii) the consideration you are willing to provide for same, and (iii) any conditions for the closing of a transaction. Following receipt of an expression of interest, and assuming the proposed terms are acceptable, the company's counsel will provide you with a form of transaction agreement contemplating such terms on an expedited basis.

Also, we attach a C.A.M and Real Estate Tax spreadsheet. We have created this from a number of different sources. This is meant as a guideline only and state that this information has not been independently verified.

Sam and Justin are available to discuss further, should you have any questions.

Thank you,



Emma Barker | Executive Assistant – Deal Coordinator

a: 100 Lombard Street, Suite 101 Toronto, ON M5C 1M3
e: emma@retailcnd.com **w:** www.retailcnd.com
o: 416-583-1990

RETAIL VENTURES CND INC. BROKERAGE
Your Retail Real Estate Partner

THIS IS **EXHIBIT “F”** REFERRED TO IN THE AFFIDAVIT OF WADE HADDAD SWORN BEFORE ME over video teleconference this 5th day of April, 2023 pursuant to O. Reg 431/20, Administering Oath or Declaration Remotely. The affiant was located in the City of Union, in the State of New Jersey while the Commissioner was located in the City of Toronto, in the Province of Ontario.



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

**OMNIBUS ASSIGNMENT AND ASSUMPTION OF
LEASES, FF&E AND TRADE FIXTURES**

THIS AGREEMENT (“**Agreement**”) is made as of the 28th day of March, 2023 (the “**Effective Date**”)

B E T W E E N:

BED BATH & BEYOND CANADA L.P.

(the “**Assignor**”)

- and -

11607987 CANADA INC. dba DKB CAPITAL

(the “**Assignee**”)

- and -

BED BATH & BEYOND INC.

(the “**Indemnifier**”)

RECITALS:

- A. The Assignor entered into certain leases as more particularly described in Schedule “A” attached hereto (collectively, the “**Leases**” and each, a “**Lease**”) with, *inter alios*, the landlords set across from each Lease in Schedule “A” attached hereto (collectively, the “**Landlords**” and each, a “**Landlord**”), for certain premises located in Canada as set across from each Lease in Schedule “A” attached hereto (for each such Lease, the “**Premises**”).
- B. The Indemnifier entered into indemnity agreements in favour of certain of the Landlords, as such indemnity agreements may have been assigned, amended, restated, renewed or supplemented from time to time.
- C. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated February 10, 2023, as amended and restated on February 21, 2023, and as may be further amended, restated and/or amended and restated from time to time (collectively, the “**Initial Order**”), BBB Canada Ltd. and the Assignor (collectively, the “**BBB Canada Entities**”) were granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), and Alvarez & Marsal Canada Inc. (“**A&M**”) was appointed as the monitor of the BBB Canada Entities (in such capacity, the “**Monitor**”). Pursuant to the terms of the Initial Order, the BBB Canada Entities and the Indemnifier have the benefit of a stay of proceedings and certain other protections and benefits provided by the Initial Order and the CCAA.
- D. The Assignor, the Assignee and the Indemnifier are entering into this Agreement to provide for the assignment and assumption of the Assigned Interest (as hereinafter defined) by the

Assignor to the Assignee in accordance with and subject to the terms and conditions contained herein.

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

ARTICLE 1 ASSIGNMENT

1.1 Assignment by Assignor

- (a) Subject to the release of the Consideration (as hereinafter defined) from escrow pursuant to Section 3.1(a), the Assignor absolutely assigns and transfers to the Assignee, effective as of May 1, 2023 (the “**Closing Date**”), all of the Assignor’s obligations, rights, title and interest, both at law and at equity, in and to each Assigned Lease (as hereinafter defined) and the Assigned Premises (as hereinafter defined), and all related rights, benefits and advantages, including the residue of the term of each Assigned Lease, any rights of renewal and/or extension, any rights of first refusal, rights of first offer and similar pre-emptive rights, and rights to purchase, if any, contained in each Assigned Lease (collectively, the “**Assigned Lease Interest**”).
- (b) Subject to the release of the Consideration from escrow pursuant to Section 3.1(a), the Assignor sells, absolutely assigns and transfers to the Assignee, as of the Closing Date, all of the Assignor’s right, title and interest in and to the FF&E and Trade Fixtures existing as of the Effective Date at premises which are Assigned Premises as of the Closing Date (the “**Assigned Assumed Location Assets**”).
- (c) Subject to the release of the Non-Location FF&E Consideration (as hereinafter defined) from escrow pursuant to Section 3.1(a), the Assignor sells, absolutely assigns and transfers to the Assignee, as of April 27, 2023 (the “**Initial FF&E Closing Date**”), all of the Assignor’s right, title and interest in and to the FF&E and Trade Fixtures existing as of the Effective Date at premises which are not Assigned Premises and are expressly listed in Schedule “C” hereto as of the Initial FF&E Closing Date (the “**Assigned Non-Assumed Location Assets**” and together with the Assigned Lease Interest and the Assigned Assumed Location Assets, the “**Assigned Interest**”, and the assignment of the Assigned Interest by the Assignor to the Assignee is the “**Assignment**”).
- (d) For clarity, nothing in this Agreement shall be construed as an assignment of, or an attempt to assign to the Assignee, any Lease which is not an Assigned Lease, or any FF&E or Trade Fixtures which are not Assigned Assets.

1.1A Definitions

- (a) “**Assigned Assets**” means, collectively, the Assigned Assumed Location Assets and the Assigned Non-Assumed Location Assets.
- (b) “**Assigned Leases**” means, collectively:

- (i) each Lease which, pursuant to the terms of such Lease:
 1. does not require the consent of the Landlord to the Assignment; and
 2. does not require prior notice to the Landlord of the Assignment; or requires prior notice to the Landlord of the Assignment but does not provide the Landlord with any termination right in connection with any request for consent to or provision of notice of the Assignment and does not entitle the Landlord to a longer notice period than was actually provided to the Landlord in respect of the Assignment,

such Leases being the No-Consent Leases; and

- (ii) each Lease in respect of which Landlord Consent has been obtained by April 11, 2023,

and an “**Assigned Lease**” means any one of the Assigned Leases.

- (c) “**Assigned Premises**” means, collectively, the Premises which have been demised pursuant to the Assigned Leases.
- (d) “**FF&E**” includes all tools, signs, furniture, machinery, equipment, personal or moveable property, chattels, furnishings and fixtures including shelves, video cameras and equipment, security systems, point-of-sales systems and related appurtenances, telecommunications systems and related appurtenances, electric light fixtures, elevating devices and equipment, millwork and ladders, in each case to the extent owned by the Assignor or any related party and which are now used or intended to be used, or which were previously used, in connection with the Assignor’s occupation and operation of the premises identified in Schedule “C”, other than Trade Fixtures.
- (e) “**Landlord Consent**” has the meaning ascribed thereto in Section 1.5.
- (f) “**No-Consent Leases**” means (i) the Leases identified by the following Store ID numbers set across from such Leases in Schedule “A” hereto: 2027, 2031, 2044, 2045, 2051, 2057, 3704 and 3708; and (ii) any additional Leases which the Assignor or its counsel advises the Assignee, in writing on or prior to April 11, 2023, are “No-Consent Leases”.
- (g) “**Trade Fixtures**” means the fixtures, shelves, counters, equipment, and other improvements in each case which were installed by or on behalf of the Assignor or any related party, in each case to the extent owned by the Assignor or any related party and which are now used or intended to be used, or which were previously used, in connection with the Assignor’s occupation and operation of the premises identified in Schedule “C”, and regardless of whether the same were constructed, installed or attached in any manner whatsoever to the floors, walls or ceilings of such premises.

1.2 Assumption by Assignee

The Assignee hereby accepts the absolute assignment of the Assigned Interest provided for in this Agreement and assumes all of the Assignor’s obligations with respect to the Assigned Interest arising or in respect of the period of time from and after the Closing Date and the Initial FF&E

Closing Date, as applicable. The Assignee further assumes all of the Assignor's obligations with respect to the Cure Costs (as hereinafter defined).

1.3 Indemnity

- (a) The Assignee hereby covenants with the Assignor, as of and from the Closing Date, including any renewals or extensions of the terms of the Assigned Leases, to indemnify and save the Assignor harmless, from any and all Claims (as hereinafter defined) arising from, relating to or in connection with any non-payment of rents or other amounts payable on the part of the tenant to be paid from time to time under the Assigned Leases, or any non-observance or non-performance of any of the terms, agreements, covenants, obligations and conditions on the part of the tenant under the Assigned Leases to be paid, observed or performed from time to time, in respect of the period from and after the Closing Date, or otherwise arising, incurred or accrued on or after the Closing Date but solely in respect of the period from and after the Closing Date. In the event that the Assignor is unable to obtain a Release (as hereinafter defined) in respect of any Assigned Lease on or before the Lease Release Date (as hereinafter defined) and such Assigned Lease is not removed from the list of Assigned Leases pursuant to Section 1.4(b), then the Assignee shall deliver to the Assignor an indemnity with respect to such Assigned Lease and the obligations described in this Section 1.3, which indemnity shall be acceptable to the Assignor, acting reasonably (including that it shall be provided by an affiliate of the Assignee that is reasonably acceptable to the Assignor).
- (b) For the purposes of the foregoing paragraph, “**Claims**” means claims, demands, complaints, grievances, actions, applications, suits, causes of action, orders, injunctions, judgments, administrative complaints, decrees, rulings, awards, assessments, directions, instructions, penalties or sanctions issued, filed or imposed by any governmental authority or arbitrator, charges, indictments, prosecutions, informations or other similar processes, assessments or reassessments, equitable interests, options, preferential arrangements of any kind or nature, assignments, restrictions, financing statements, deposit arrangements, rights of others, leases, sub-leases, licences, rights of first refusal or similar restrictions, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, including loss of value, reasonable professional fees, including fees and disbursements of legal counsel on a full indemnity basis, and all actual and documented costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing.

1.4 Conditional on Release

- (a) This Agreement, in respect of each Assigned Lease, is conditional upon receipt by the Assignor, acting reasonably, from the applicable Landlord and any entity that assigned a Lease to the Assignor, of, in the case of a Landlord, a written release of the Assignor and Indemnifier or a Court order approving the Assignment and releasing the Assignor, if any, and the Indemnifier from their obligations under the Lease and any indemnity agreement in respect of the Lease or any obligations thereunder, and in the case of an entity that assigned a Lease to the Assignor, a release of the Assignor, each in a form acceptable to the Assignor and the Indemnifier (the “**Release**”), such Release to be provided or obtained on or prior to April 11, 2023 (the “**Lease Release Date**”). This condition is for the sole benefit of the Assignor and may be waived, in whole or in part, by the Assignor. Further,

the Assignee shall use commercially reasonable efforts to assist the Assignor in obtaining the Release and waivers contemplated herein, including, without limitation, by providing any other information regarding the Assignee reasonably requested by any Landlord forthwith, and executing each agreement containing a Release that is in respect of a No-Consent Lease, provided same is acceptable to the Assignee and Assignor, each acting reasonably.

- (b) In the event that the Assignor is unable to obtain a Release in respect of any of the Assigned Leases on or before the Lease Release Date, the Assignor shall have the option to remove such Lease or Leases from the list of Assigned Leases by providing Notice (as hereinafter defined) prior to April 11, 2023 and the Assignee will be entitled to a refund of the applicable Refundable Consideration (as hereinafter defined) paid for the Assigned Leases, as set forth in Schedule “C” and as contemplated in Section 3.1(b) below, to account for such Lease or Leases being removed from this Agreement; provided, however, that if the Assignee provides the Assignor with an indemnity from an Assignee affiliate that is satisfactory to the Assignor, acting reasonably, then such Lease or Leases shall remain on the list of Assigned Leases notwithstanding a Notice being provided pursuant to this subparagraph.
- (c) If the Assignor does not provide such Notice in accordance with Section 1.4(b) by April 11, 2023, the Assignment shall be effected in accordance with the terms and conditions of this Agreement, including the Assignee affiliate indemnity requirements of Sections 1.3(a) and 1.4(b).

1.5 Conditional on Landlord Consent

- (a) This Agreement, in respect of each Lease other than the No-Consent Leases, is conditional upon receipt by the Assignor, from the applicable Landlord, of (i) a consent to the Assignment of such Lease and a waiver of all termination rights in its favour in connection with the Assignment of such Lease by way of the Landlord Consent to Assignment and Amendment of Lease, substantially in the form attached hereto as Schedule “B” or otherwise acceptable to the Assignor and Assignee, each acting reasonably, or (ii) an assignment order of the Court pursuant to Section 11.3 of the CCAA with respect to such Lease (the “**Landlord Consent**”), in each case which shall be obtained on or prior to April 11, 2023. In each case, the Assignee shall use commercially reasonable efforts to assist the Assignor in obtaining the Landlord Consents, including by entering into agreements required by the applicable Leases and any other agreements reasonably requested by the Landlord.
- (b) The only amendments to any Lease in the Landlord Consent shall be (i) to confirm that the Assignee’s trade name is acceptable and does not violate any trade name restrictions in such Lease, and (ii) approving that currently permitted signage may display the name of Assignee’s business operated from such location, but otherwise be subject to signage restrictions in such Lease.
- (c) In the event that a Landlord Consent in respect of any Lease (other than the No-Consent Leases) is not obtained on or prior to April 11, 2023 (collectively, the “**Unassignable Leases**”), then (i) this Agreement shall automatically terminate with respect to the Unassignable Leases and the Unassignable Leases shall not form part of the Assigned

Leases; and (ii) at the option of the Assignee, to be exercised by April 13, 2023, this Agreement shall automatically terminate with respect to the FF&E and Trade Fixtures located at the Premises leased pursuant to the Unassignable Leases, and the Assignee shall be entitled to a refund of the applicable Refundable Consideration in accordance with Section 3.1 below, failing which such FF&E and Trade Fixtures shall become Assigned Non-Assumed Location Assets.

1.6 Conditional on Approval Order

This Agreement is conditional on the receipt of an order from the Court approving of the assignment and assumption of the Assigned Leases as contemplated herein, to the extent required, which Order shall be in form and substance satisfactory to each of the Assignor (in consultation with the Monitor) and the Assignee, acting reasonably.

1.7 Cure Costs

The Assignor will not be responsible, including pursuant to any Landlord Consent agreement, for any costs which may be necessary to cure any defaults under any of the Assigned Leases which exist as of the Closing Date (collectively, the “**Cure Costs**”). Subject to any Releases which may be provided by any Landlords in a Landlord Consent agreement, the Assignee will be responsible for all Cure Costs for non-monetary defaults under the Assigned Leases. The Landlord Consent shall provide that the Assignee is released from Cure Costs for monetary defaults, failing which such Landlord Consent shall be deemed to have not been obtained.

ARTICLE 2 AS IS, WHERE IS

2.1 As Is, Where Is

- (a) The Assignee covenants and agrees in favour of the Assignor that it has had an opportunity to inspect and will accept the Assigned Interest, including the Assigned Premises, in all respects in an “as is, where is” condition as of the Closing Date (or, in the case of the Assigned Non-Assumed Location Assets, the Initial FF&E Closing Date) without any representation or warranty whatsoever, in this Agreement or in any agreement entered into directly between the Landlord and the Assignee, and the Assignee has reviewed the Leases and is familiar with the Leases in all respects. The Assignor shall leave the Assigned Premises in broom-swept condition on the Closing Date.
- (b) The Assigned Assets are being purchased by the Assignee on the Closing Date (or, in the case of the Assigned Non-Assumed Location Assets, the Initial FF&E Closing Date) in its then “as is, where is” condition, subject to ordinary wear and tear. The Assignee acknowledges there are no representations or warranties of any kind whatsoever with respect to the condition or repair of the Assigned Assets, including but not limited to any implied warranties or conditions of quiet usage, merchantability, merchantable quality, fitness for a particular purpose, or from the course of dealing or usage of trade. In addition to the sale and assignment of the Assigned Assets as set out in this Agreement, any personal property, FF&E or Trade Fixtures left in the Assigned Premises on the Closing Date shall

become the sole property of the Assignee. The Assignor will deliver possession of the Assigned Assets in their as is, where is location without a bill of sale or other title documentation on the Closing Date or Initial FF&E Closing Date, as applicable. Further, the Assignee agrees that there shall be no adjustment to the consideration if any FF&E or Trade Fixtures for any reason become damaged or come into disrepair between the Effective Date and the Closing Date, unless the value of such FF&E and Trade Fixtures damaged or that comes into disrepair in any Assigned Premises exceeds a present value of \$10,000, in which case there shall be an adjustment to the Consideration for the FF&E and Trade Fixtures allocated to such Assigned Premises, not to exceed the total value of FF&E allocated to such Assigned Premises.

2.2 Permitted Use

The Assignee accepts the permitted use as set out in each of the Leases, including any use restrictions and exclusive uses provided in the Leases.

ARTICLE 3 CONSIDERATION AND COVENANTS

3.1 Consideration for Assignment

- (a) The Assignee agrees to pay to the Monitor, in trust and to be held in escrow, or as the Monitor may otherwise direct in writing, within one (1) Business Day (as hereinafter defined) of the execution of this Agreement, the amount of \$1,772,264.34 in Canadian dollars (the “**Consideration**”), which shall be allocated as follows:
- (i) \$1,100,000.00, which is allocated to the Leases as set out in Schedule “A” attached hereto;
 - (ii) \$457,194.09, which is allocated to the FF&E and Trade Fixtures located at each of the Premises as set out in Schedule “A” attached hereto, together with the sales, provincial sales, goods and services and harmonized sales taxes payable thereon; and
 - (iii) \$215,070.25, which is allocated to the Assigned Non-Assumed Location Assets, together with the sales, provincial sales, goods and services and harmonized sales taxes payable thereon (the “**Non-Location FF&E Consideration**”).
- (b) The portion of the Consideration allocated to Leases which are not Assigned Leases as of April 11, 2023 and the portion of the Consideration allocated to FF&E and Trade Fixtures located at Premises that are not Assigned Premises as of April 11, 2023 (collectively, the “**Refundable Consideration**”) shall be released from escrow and returned to the Assignee on or about April 14, 2023 in accordance with payment instructions to be provided by the Assignee to the Monitor prior to April 12, 2023.
- (c) The portion of the Consideration allocated to the Assigned Leases and the portion of the Consideration allocated to FF&E and Trade Fixtures at Premises that are Assigned

Premises (the “**Purchase Consideration**”) shall be released from escrow to the Assignor on the Closing Date in accordance with payment instructions to be provided by the Assignor to the Monitor prior to the Closing Date.

- (d) The Non-Location FF&E Consideration shall be released from escrow to the Assignor on the Initial FF&E Closing Date in accordance with payment instructions to be provided by the Assignor to the Monitor prior to such date.
- (e) The parties hereto acknowledge and agree that the Monitor shall (i) be under no obligation to invest the Consideration or hold same in an interest bearing account prior to the Closing Date, (ii) be entitled to release the Refundable Consideration on or about April 14, 2023 in accordance with Section 3.1(b) without independent investigation, upon receiving written confirmation from the Assignor or its counsel as to the amount of the Consideration which is Refundable Consideration, and (iii) be entitled to release the Purchase Consideration and the Non-Location FF&E Consideration from escrow, to the Assignor on the Closing Date and the Initial FF&E Closing Date in accordance with Section 3.1(c) and Section 3.1(d), without independent investigation or any further instruction, and the Monitor shall have no liability to the parties hereto in connection therewith.
- (f) The parties hereto acknowledge and agree that A&M, acting in its capacity as Monitor, shall have no liability in its personal or corporate capacity or otherwise, in connection with this Agreement.

3.2 Access

From March 29, 2023 until the Closing Date, the Assignee and its agents, advisors, consultants, employees and representatives will have access to the Assigned Premises upon prior written Notice of not less than two (2) Business Days to the Assignor solely for the purposes of visiting and conducting noninvasive inspections of the Assigned Premises. The Assignee and its agents, advisors, consultants, employees and representatives will use commercially reasonable efforts to not interfere with the Assignor’s business. No FF&E or Trade Fixtures shall be removed from any Assigned Premises prior to the Closing Date.

3.3 Interim Period

- (a) During the period from the Effective Date to April 11, 2023, the Assignor shall comply with each and every term and condition of the Leases to the extent required by the Assignor’s CCAA proceedings, subject only to the provisions of the CCAA, the Initial Order and any other order of the Court.
- (b) During the period from the April 12, 2023 to the Closing Date, the Assignor shall comply with each and every term and condition of the Assigned Leases to the extent required by the Assignor’s CCAA proceedings, subject only to the provisions of the CCAA, the Initial Order and any other order of the Court.

3.4 Trademarks

Notwithstanding the foregoing or anything else contained herein or elsewhere, the Assignee acknowledges and agrees that: (a) no signs, trade-marks, trade-names, logos, commercial symbols,

business names or other intellectual property rights identifying “Bed Bath & Beyond” or “buybuy Baby” are conveyed or intended to be conveyed to the Assignee as part of the Assigned Interest; and (b) all right, title and interest of the Assignor in and to all of its existing signs, trade-marks, trade-names, logos, commercial symbols, business names or other intellectual property rights identifying “Bed Bath & Beyond” or “buybuy Baby” or containing the words “Bed Bath & Beyond” or “buybuy Baby” are hereby specifically reserved and excluded from the Assigned Interest.

3.5 FF&E Removal

With respect to the removal of the Assigned Non-Assumed Location Assets by or on behalf of the Assignee, the Assignee covenants and agrees that:

- (a) prior to removal of any Assigned Non-Assumed Location Assets, the Assignee shall arrange insurance with respect to its access to the premises where the Assigned Non-Assumed Location Assets are located and the removal of the Assigned Non-Assumed Location Assets (the “**Insurance**”), which Insurance shall be reasonably acceptable to the Assignor and provide for, at a minimum: (i) the Assignor, the Monitor and the Consultant (as defined in the Sale Approval Order granted by the Ontario Superior Court of Justice (Commercial List) pursuant to the CCAA on February 21, 2023, referred to herein as the “**Sale Approval Order**”) as additional insureds; (ii) 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;
- (b) any and all electrical disconnections with respect to the Assigned Non-Assumed Location Assets shall be performed by a licensed electrician, in accordance with all applicable regulations, codes and other requirements;
- (c) any and all debris resulting from the removal of the Assigned Non-Assumed Location Assets shall be removed from the applicable premises by the Assignor on the date of the removal of the Assigned Non-Assumed Location Assets;
- (d) any and all damage resulting from, or caused in connection with, the removal of any Assigned Non-Assumed Location Assets shall be fully repaired by the Assignee by no later than the Closing Date; and
- (e) removal of the Assigned Non-Assumed Location Assets shall be completed in accordance with the Sale Approval Order (including the sales guidelines appended thereto) and applicable leases,

provided that, for the avoidance of doubt, all cost associated with the removal of the Assigned No-Assumed Location Assets, including the cost of compliance with the foregoing, shall be borne solely and exclusively by the Assignee.

The Assignee agrees to indemnify, defend and hold harmless the Assignor and its affiliates from and against all Claims for damages, losses, injury or costs resulting from any breach of its obligations hereunder and for damages, losses or injury caused to property or persons through the actions or negligence of the Assignor or its agents or representatives, and in connection with the foregoing, shall provide the Assignee with an indemnity agreement in connection with the foregoing from an affiliate reasonably acceptable to the Assignee prior to the Initial FF&E Closing Date.

ARTICLE 4 ADJUSTMENTS

4.1 Rent

The Assignor and the Assignee shall adjust as between themselves the rent (including basic or minimum rent and additional rent) and other amounts payable under the Assigned Leases which have been paid or pre-paid to the applicable Landlords in respect of the Assigned Leases for any period prior to the Closing Date as well as the month in which the Closing Date occurs, with the Closing Date itself to be allocated to the Assignee.

4.2 Utilities

The Assignee shall not assume, and as of the Closing Date, the Assignor shall terminate, any contracts or agreements entered into by or on behalf of the Assignor for the supply of any utilities including, without limitation, electricity, gas, water, fuel, telephone service, internet services, security and surveillance services or otherwise at the Assigned Premises (collectively, “**Utilities**” and each, a “**Utility**”). From and after the Closing Date, any and all charges and other related fees payable for Utilities for the Assigned Premises pursuant to any invoice or statement issued on or after the Closing Date to the extent relating to a time period commencing on or after the Closing Date, shall be the sole responsibility of the Assignee. On the Closing Date, the Assignee shall set up all required Utility accounts for the Assigned Premises in its own name, and the Assignor shall not be responsible for payment of any utilities following such date. The parties agree to adjust on the Closing Date for any Utilities paid by the Assignor in respect of any period following the Closing Date that the Assignee will have the benefit of.

ARTICLE 5 TAXES

5.1 Tax Matters

The Assignee will pay, in addition to the Consideration, and the Assignor will collect, any goods and services tax, provincial sales tax or harmonized sales tax, as the case may be, imposed under the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended (the “**Excise Tax Act**”) and any similar value added or multi-staged tax or sales tax exigible on the Assignment, except to the extent that the Assignee is permitted under subsection 221(2) of the Excise Tax Act and any equivalent or corresponding provision under any applicable provincial or territorial legislation to self-assess and

remit such taxes with respect to the Leases directly to the appropriate governmental authority. Further, together with the execution of this Agreement, the Assignee shall execute a certificate, undertaking and indemnity which includes its certification of its registration number issued under the Excise Tax Act, and is in the form attached hereto as Schedule “D”, dated as of the Closing Date (the “**GST/HST Certificate, Undertaking and Indemnity**”). For the avoidance of doubt, the Assignee’s ability to self assess as set out in the GST/HST Certificate, Undertaking and Indemnity for goods and services tax or harmonized sales tax will be with respect to that payable on the consideration in respect of the Leases only and not with respect to goods and services tax, provincial sales tax or harmonized sales tax payable on the FF&E or Trade Fixtures.

5.2 Residency of Assignee

The Assignee warrants, represents and covenants to the Assignor, and acknowledges and confirms that the Assignor is relying on such representation and warranty in connection with the entering into of this Agreement, that the Assignee is not a non-resident of Canada within the meaning of the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.), as amended.

The provisions of this Article 5 shall survive and not merge on closing.

ARTICLE 6 GENERAL

6.1 Defined Terms

Unless otherwise expressly provided for herein, all capitalized terms when used in this Agreement have the same meaning given to such terms in the Lease.

6.2 Indemnifier

Indemnifier hereby acknowledges this Agreement and the other parties hereto acknowledge that the Indemnifier is a beneficiary hereof.

6.3 Time of the Essence

Time shall be of the essence of this Agreement.

6.4 Enurement

This Agreement shall become effective when executed by the parties hereto and after that time shall be binding upon and enure to the benefit of the parties and their respective heirs, executors, personal legal representatives, successors and permitted assigns. Neither this Agreement nor any of the rights or obligations under this Agreement shall be assignable or transferable by either party without the consent of the other party.

6.5 Entire Agreement

This Agreement and the schedules hereto constitute the entire agreement between the parties with respect to the assignment and assumption of the Leases and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties with respect to the subject matter of this Agreement. There are no representations, warranties, covenants,

conditions or other agreements, legal or conventional, express or implied, collateral, statutory or otherwise, between the parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement. The parties have not relied and are not relying on any other information, discussion or understanding in entering into and completing the transactions contemplated by this Agreement.

6.6 Waiver

- (a) No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision (whether or not similar), nor shall such waiver be binding unless executed in writing by the party to be bound by the waiver.
- (b) No failure on the part of any party to this Agreement to exercise, and no delay in exercising any right under this Agreement shall operate as a waiver of such right; nor shall any single or partial exercise of any such right preclude any other or further exercise of such right or the exercise of any other right.

6.7 Further Assurances

Each of the parties covenants and agrees to do such things, to attend such meetings and to execute such further conveyances, transfers, documents and assurances as may be deemed necessary or advisable from time to time in order to carry out the terms and conditions of this Agreement in accordance with their true intent.

6.8 Severability

If any provision of this Agreement shall be determined to be illegal, invalid or unenforceable, that provision shall be severed from this Agreement and the remaining provisions shall continue in full force and effect.

6.9 Governing Law

This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. Notwithstanding the foregoing, the real property laws of the province in which the stores leased pursuant to the Assigned Leases are located shall apply with respect real property matters in respect of such stores.

6.10 Forum

Each party to this Agreement submits to the exclusive jurisdiction of the Court in any action, application, reference or other proceeding arising out of or related to this Agreement and agrees that all claims in respect of any such actions, application, reference or other proceeding shall be heard and determined in the CCAA proceedings before the Court until the termination of such proceedings.

6.11 Headings

The division of this Agreement into Sections, the insertion of headings is for convenience of reference only and are not to be considered in, and shall not affect, the construction or interpretation of any provision of this Agreement.

6.12 References

Where in this Agreement reference is made to an article or section, the reference is to an article or section in this Agreement unless the context indicates the reference is to some other agreement. The terms “this Agreement”, “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof and include any agreement supplemental hereto. The word “includes” or “including” shall mean “includes without limitation” or “including without limitation”, respectively. The word “or” is not exclusive.

6.13 Number and Gender

Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders.

6.14 Business Days

For purposes of this Agreement, “**Business Days**” shall mean those days that are Monday – Friday, inclusive, excluding holidays in the Province of Ontario or the Province in which any of the Premises are located. If any payment is required to be made or other action is required to be taken pursuant to this Agreement on a day which is not a Business Day, then such payment or action shall be made or taken on the next Business Day. All actions to be made or taken by a particular Business Day must be made or taken by no later than 4:30 p.m. (Toronto time) on a Business Day and any action made or taken thereafter shall be deemed to have been made and received on the next Business Day.

6.15 Notice

Any notice, consent, confirmation or approval required or permitted to be given in connection with this Agreement or the Lease (a “**Notice**”) shall be in writing and shall be sufficiently given if delivered or transmitted in accordance with the Lease at the address for such party set out below:

(a) To the Assignor:

Bed Bath & Beyond Canada LP
c/o
Bed Bath & Beyond Inc.
650 Liberty Avenue,
Union, New Jersey 07083
Attention: SVP Real Estate and Store Development

Bed Bath & Beyond Canada LP
c/o
Bed Bath & Beyond Inc.
650 Liberty Avenue,
Union, New Jersey 07083
Attention: General Counsel

Bed Bath & Beyond Canada LP
c/o

Bed Bath & Beyond Inc.
650 Liberty Avenue,
Union, New Jersey 07083
Attention: Lease Administration

(b) To the Assignee:

11607987 Canada Inc. dba DKB Capital

1430 Cormorant Road
Ancaster, Ontario, L9G 4V5

Attention: Doug Putman and Jesse Gardner
Email: doug@putmaninvestments.com and jesse@putmaninvestments.com

(c) To the Monitor:

Alvarez & Marsal Canada Inc.
200 Bay St.
Toronto, Ontario M5J 2J1

Attention: Al Hutchens/Ryan Gruneir
Email: ahutchens@alvarezandmarsal.com/rgruneir@alvarezandmarsal.com

(d) To the Indemnifier:

Bed Bath & Beyond Inc.
650 Liberty Avenue,
Union, New Jersey 07083
Attention: SVP Real Estate and Store Development

6.16 Counterparts and Delivery

All parties agree that this Agreement may be executed in counterpart and transmitted by electronic means and that the reproduction of signatures in counterpart by way of electronic means will be treated as though such reproduction were executed originals.

[Signature pages follow.]

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the Effective Date.

**BED BATH & BEYOND CANADA L.P. by its
general partner BBB CANADA LTD.**

By: Wade Haddad
Name: Wade Haddad
Title: Authorized Signing Officer

**11607987 CANADA INC. dba DKB
CAPITAL**

By: _____
Name:
Title:

By: _____
Name:
Title:

BED BATH & BEYOND INC.

By: Wade Haddad
Name: Wade Haddad
Title: Authorized Signing Officer

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the Effective Date.

BED BATH & BEYOND CANADA L.P. by its general partner BBB CANADA LTD.

By: _____

Name:

Title:

By: _____

Name:

Title:

11607987 CANADA INC. dba DKB CAPITAL

Per:



Doug Putman

Director

BED BATH & BEYOND INC.

By: _____

Name:

Title:

By: _____

Name:

Title:

**SCHEDULE “A”
LEASE PARTICULARS**

Store ID	Premises	Landlord	Lease Documents
2001	Certain premises in the City of Richmond Hill, in the Province of Ontario, as more particularly described in the Lease	Yonge Bayview Holdings Inc.	<p>Lease dated June 6, 2007 between the Landlord and BBB Canada Ltd. (the “Original Tenant”), as tenant, as same has been assigned, amended, restated, renewed or supplemented from time to time, including but not limited to:</p> <ul style="list-style-type: none"> • Short Term Lease dated October 11, 2007 between the Landlord, the Original Tenant and the Indemnifier • Rent Commencement and Expiration Date Agreement dated December 18, 2007 between the Landlord and the Original Tenant • Assignment of Lease dated February 15, 2008 between the Original Tenant and the Assignor • Extension Letter dated April 21, 2017 issued by the Assignor to the Landlord • Lease Extension Agreement dated December 13, 2021 between the Landlord, the Assignor and the Indemnifier
2007	Certain premises in the City of Edmonton, in the Province of Alberta, as more particularly described in the Lease	West Edmonton Mall Property Inc.	<p>Lease dated November 19, 2008, between the Landlord and the Assignor, as same has been assigned, amended, restated, renewed or supplemented from time to time, including but not limited to:</p> <ul style="list-style-type: none"> • First Amendment of Lease dated July 21, 2009 between the Landlord and the Assignor • Second Amendment of Lease dated May 6, 2010 between the Landlord and the Assignor • Third Amendment of Lease dated March 28, 2011 between the Landlord and the Assignor • Rectification Agreement dated October 17, 2012 between the Landlord and the Assignor • Fourth Amendment of Lease dated July 12, 2013 between the Landlord and the Assignor • Extension Letter dated July 22, 2019 issued by the Assignor to the Landlord • ROFR Letter dated October 4, 2022 issued by the Landlord and accepted by the Assignor

Store ID	Premises	Landlord	Lease Documents
2013	Certain premises in the City of Calgary, in the Province of Alberta, as more particularly described in the Lease	RioCan Holdings (Brentwood Village) Inc.	<p>Lease dated March 31, 2009 between Riokim Holdings (Alberta) Inc. (the “Original Landlord”), as landlord, and the Assignor, as same has been assigned, amended, restated, renewed or supplemented from time to time, including but not limited to:</p> <ul style="list-style-type: none"> • Notice to Tenants dated March 31, 2015 from the Original Landlord and Letter dated April 1, 2015 from the Landlord • Renewal Letter dated April 25, 2019 from the Assignor to the Landlord • Letter Agreement dated May 19, 2020, between RioCan Management Inc. (as agent for, among others, the Landlord), the Assignor and the Indemnifier • Letter Agreement dated August 16, 2022, between RioCan Management Inc., the Assignor and the Landlord
2014	Certain premises in the City of Newmarket, in the Province of Ontario, as more particularly described in the Lease	Riotrin Properties (Newmarket) Inc.	<p>Lease dated April 23, 2009 between the Landlord and the Assignor as same has been assigned, amended, restated, renewed or supplemented from time to time, including but not limited to:</p> <ul style="list-style-type: none"> • Renewal Letter dated April 25, 2019 from the Assignor to the Landlord • Letter Agreement dated May 19, 2020, between RioCan Management Inc. (as agent for, among others, the Landlord), the Assignor and the Indemnifier
2021	Certain premises in the City of Cambridge, in the Province of Ontario, as more particularly described in the Lease	Calloway REIT (Cambridge) Inc.	<p>Lease dated January 29, 2010 between the Landlord and the Assignor, as same has been assigned, amended, restated, renewed or supplemented from time to time, including but not limited to:</p> <ul style="list-style-type: none"> • Letter Amending Agreement dated March 3, 2011 between the Landlord and the Assignor
2022	Certain premises in the City of Calgary, in the Province of	1431582 Alberta Inc.	<p>Lease dated December 23, 2008 between the Landlord and OD International, Inc. (the “Original Tenant”), as tenant, as same has been assigned, amended, restated, renewed or supplemented from time to time, including but not limited to:</p>

Store ID	Premises	Landlord	Lease Documents
	Alberta, as more particularly described in the Lease		<ul style="list-style-type: none"> • Assignment and Assumption of Lease dated February 26, 2010 among the Landlord, the Original Tenant, Office Depot, Inc. (the “Original Indemnifier”), as original indemnifier, the Assignor and the Indemnifier • Consent to Assignment of Lease dated February 26, 2010 among the Landlord, the Original Tenant, the Original Indemnifier, the Assignor and the Indemnifier
2023	Certain premises in the City of Abbotsford, in the Province of British Columbia, as more particularly described in the Lease	Z99999 Holdings, Ltd.	<p>Lease dated July 26, 2010 between Penvest Realty Limited and First Capital Holdings Trust (collectively, the “Original Landlord”), as landlord, and the Assignor, as same has been assigned, amended, restated, renewed or supplemented from time to time, including but not limited to:</p> <ul style="list-style-type: none"> • Lease Modification Agreement dated December 10, 2020 between the Landlord and the Assignor
2024	Certain premises in the City of Belleville, in the Province of Ontario, as more particularly described in the Lease	Davpart Inc.	<p>Lease dated June 2, 2010 between the Landlord and 151516 Canada Inc. (the “Original Landlord”), as landlord, as same has been assigned, amended, restated, renewed or supplemented from time to time, including but not limited to:</p> <ul style="list-style-type: none"> • Lease Amending Agreement dated June 12, 2020 between the Landlord and the Assignor • Second Lease Amending Agreement dated April 12, 2021 between the Landlord and the Assignor
2025	Certain premises in the City of Kitchener, in the Province of Ontario, as more particularly described in the Lease	The INCC Corp.	<p>Lease dated June 29, 2010 between the Landlord and the Assignor, as same has been assigned, amended, restated, renewed or supplemented from time to time, including but not limited to:</p> <ul style="list-style-type: none"> • Amendment of Lease dated November 30, 2010 between the Landlord and the Assignor • Second Amendment of Lease dated April 10, 2011 between the Landlord and the Assignor • Lease Modification Agreement dated July 2, 2020 between the Landlord and the Assignor • Lease Renewal Agreement dated June 15, 2021 between the Landlord and the Assignor

Store ID	Premises	Landlord	Lease Documents
2026	Certain premises in the City of Stittsville, in the Province of Ontario, as more particularly described in the Lease	Riotrin Properties (Hazeldean) Inc.	Lease dated July 26, 2011 between the Landlord and the Assignor as same has been assigned, amended, restated, renewed or supplemented from time to time, including but not limited to: <ul style="list-style-type: none"> • Letter Agreement dated May 19, 2020, between RioCan Management Inc. (as agent for, among others, the Landlord), the Assignor and the Indemnifier • Letter Agreement dated April 15, 2022 from the Assignor to the Landlord
2027	Certain premises in the City of Kelowna, in the Province of British Columbia, as more particularly described in the Lease	McIntosh Properties Ltd.	Lease dated June 8, 2021 between the Landlord and the Assignor, as same has been assigned, amended, restated, renewed or supplemented from time to time.
2028	Certain premises in the City of Kamloops, in the Province of British Columbia, as more particularly described in the Lease	S.R.V. Developments Ltd. and Kamloops Holdings Inc.	Lease dated May 6, 2011 between the Landlord and the Assignor, as same has been assigned, amended, restated, renewed or supplemented from time to time, including but not limited to: <ul style="list-style-type: none"> • Renewal Agreement dated November 4, 2021 between the Landlord and the Assignor
2031	Certain premises in the City of St. John's, in the Province of Newfoundland and Labrador, as more	Village Shopping Centre (2006) Inc.	Lease dated December 18, 2011 between Village Shopping Centre (NL) Inc. (the " Original Landlord "), as landlord, and the Assignor, as same has been assigned, amended, restated, renewed or supplemented from time to time, including but not limited to: <ul style="list-style-type: none"> • Notice and Direction dated March 22, 2016 from the Original Landlord to the Assignor re: assignment to the Landlord

Store ID	Premises	Landlord	Lease Documents
	particularly described in the Lease		
2038	Certain premises in the City of Toronto, in the Province of Ontario, as more particularly described in the Lease	Queensway 427 Centre Inc.	Lease dated August 21, 2012 between the Landlord and the Assignor, as same has been assigned, amended, restated, renewed or supplemented from time to time.
2043	Certain premises in the City of Regina, in the Province of Saskatchewan, as more particularly described in the Lease	Harvard Developments Inc.	Lease dated July 31, 2013 between the Landlord and the Assignor, as same has been assigned, amended, restated, renewed or supplemented from time to time, including but not limited to: <ul style="list-style-type: none"> • Lease Amendment Agreement - Rent Deferral dated June 29, 2020 between the Landlord and the Assignor
2044	Certain premises in the City of Burnaby, in the Province of British Columbia, as more particularly described in the Lease	AB Metro Properties Ltd.	Lease dated May 14, 2014 between the Landlord and the Assignor, as same has been assigned, amended, restated, renewed or supplemented from time to time, including but not limited to: <ul style="list-style-type: none"> • First Lease Amending Agreement dated March 16, 2015 between the Landlord and the Assignor • Second Lease Amending Agreement dated April 14, 2015 between the Landlord and the Assignor • Third Lease Amending Agreement dated August 5, 2015 between the Landlord and the Assignor • Fourth Lease Amending Agreement dated February 24, 2016 between the Landlord and the Assignor
2045	Certain premises in the City of Stoney	Heritage Greene	Lease dated June 2, 2014 between the Landlord and the Assignor, as same has been assigned, amended, restated, renewed or supplemented from time to time.

Store ID	Premises	Landlord	Lease Documents
	Creek, in the Province of Ontario, as more particularly described in the Lease	Development Corporation	
2049	Certain premises in the City of Vaughan, in the Province of Ontario, as more particularly described in the Lease	Riotrin Properties (Vaughan) Inc., Riotrin Properties (Vaughan 2) Inc., Riotrin Properties (Vaughan 3) Inc. and 1493130 Ontario Limited	Lease dated February 13, 2015 between the Landlord and the Assignor as same has been assigned, amended, restated, renewed or supplemented from time to time, including but not limited to: <ul style="list-style-type: none"> • Letter Agreement dated May 19, 2020, between RioCan Management Inc. (as agent for, among others, the Landlord), the Assignor and the Indemnifier
2051	Certain premises in the City of Vancouver, in the Province of British Columbia, as more particularly described in the Lease	West Broadway Centre Ltd.	Lease dated August 29, 2015 between the Landlord and the Assignor, as same has been assigned, amended, restated, renewed or supplemented from time to time.
2052	Certain premises in the City of Halifax, in the Province of	Calloway REIT (Halifax) Ltd.	Lease dated November 21, 2016 between the Landlord and the Assignor, as same has been assigned, amended, restated, renewed or supplemented from time to time, including but not limited to:

Store ID	Premises	Landlord	Lease Documents
	Nova Scotia, as more particularly described in the Lease		<ul style="list-style-type: none"> • First Amendment to Lease dated February 9, 2018 between the Landlord and the Assignor
2053	Certain premises in the City of Saskatoon, in the Province of Saskatchewan, as more particularly described in the Lease	Preston West Properties Ltd.	Lease dated April 15, 2017 between the Landlord and the Assignor, as same has been assigned, amended, restated, renewed or supplemented from time to time.
2057	Certain premises in the City of Calgary, in the Province of Alberta, as more particularly described in the Lease	ROYOP (Legacy) Development Ltd.	<p>Lease dated May 13, 2019 between the Landlord and the Assignor, as same has been assigned, amended, restated, renewed or supplemented from time to time, including but not limited to:</p> <ul style="list-style-type: none"> • First Lease Amendment Agreement dated November 18, 2020 between the Landlord and the Assignor • Second Lease Amendment Agreement dated April 16, 2021 between the Landlord and the Assignor • Third Lease Amendment Agreement dated January 24, 2022 between the Landlord and the Assignor
3701	Certain premises in the City of Edmonton, in the Province of Alberta, as more particularly described in the Lease	Canadian Property Holdings (Alberta) Inc. and Cameron Corporation	<p>Lease dated November 27, 2013 between the Landlord and the Assignor, as same has been assigned, amended, restated, renewed or supplemented from time to time, including but not limited to:</p> <ul style="list-style-type: none"> • First Amendment to Lease dated August 25, 2014 between the Landlord and the Assignor

Store ID	Premises	Landlord	Lease Documents
3702	Certain premises in the City of Whitby, in the Province of Ontario, as more particularly described in the Lease	Riokim Holdings (Ontario) Inc.	Lease dated July 29, 2015 between the Landlord and the Assignor, as same has been assigned, amended, restated, renewed or supplemented from time to time, including but not limited to: <ul style="list-style-type: none"> • Rent Commencement and Expiration Date Agreement dated March 29, 2016 between the Landlord and the Assignor • Letter Agreement dated May 19, 2020, between RioCan Management Inc. (as agent for, among others, the Landlord), the Assignor and the Indemnifier
3704	Certain premises in the City of Langley, in the Province of British Columbia, as more particularly described in the Lease	Langley City Square Properties Ltd.	Lease dated May 26, 2015 between the Landlord and the Assignor, as same has been assigned, amended, restated, renewed or supplemented from time to time, including but not limited to: <ul style="list-style-type: none"> • Amending Agreement dated October 29, 2015 between the Landlord and the Assignor • Second Amending Agreement dated May 24, 2016 between the Landlord and the Assignor
3706	Certain premises in the City of Edmonton, in the Province of Alberta, as more particularly described in the Lease	West Edmonton Mall Property Inc.	Lease dated July 17, 2017 between the Landlord and the Assignor, as same has been assigned, amended, restated, renewed or supplemented from time to time.
3708	Certain premises in the City of London, in the Province of Ontario, as more particularly described in the Lease	1699259 Ontario Limited and 2573268 Ontario Inc.	Lease dated April 10, 2018 between the Landlord and the Assignor, as same has been assigned, amended, restated, renewed or supplemented from time to time.

Store ID	Premises	Landlord	Lease Documents
3709	Certain premises in the City of Calgary, in the Province of Alberta, as more particularly described in the Lease	RioCan Holdings (Brentwood Village) Inc.	Lease dated April 24, 2018 between the Landlord and the Assignor, as same has been assigned, amended, restated, renewed or supplemented from time to time, including but not limited to: <ul style="list-style-type: none"> • Letter Agreement dated May 19, 2020, between RioCan Management Inc. (as agent for, among others, the Landlord), the Assignor and the Indemnifier
2033	Certain premises in the City of Victoria, in the Province of British Columbia, as more particularly described in the Lease	Mayfair Shopping Centre Limited Partnership	Lease dated March 13, 2012 between the Landlord and the Assignor, as same has been assigned, amended, restated, renewed or supplemented from time to time, including but not limited to, Lease Extension Agreement dated January 27, 2022

SCHEDULE "B"
FORM OF LANDLORD CONSENT

See attached.

SCHEDULE "C"

Store ID	Shopping Centre/Store Name (if applicable) and Address	Consideration allocated to Lease	Consideration allocated to FF&E and Trade Fixtures	Consideration allocated to Security Equipment at
2001	Bayview Glen, 225 High Tech Road, Unit #1, Richmond Hill,			
2002	200 North Service Road West, Oakville, ON			
2004	1751 Victoria Street East, Whitby, ON			
2006	2975 Argenta Road, Mississauga, ON			
2007	West Edmonton Mall, 8882 170 Street, Suite 2554,			
2010	3125 Airport Road, Brampton, ON			
2013	Brentwood Village (Calgary), 3630 Brentwood Road NW, Suite 600, Calgary, AB			
2014	Green Lane Centre, 18126 Yonge Street, Newmarket, ON			
2021	Smartcentres Cambridge, 70 Pine Bush Road, Unit 1,			
2022	306 Glenmore Trail, S.W., Calgary, AB			
2023	West Oaks Shopping Center, 32700 South Fraser Way, Unit 65, Abbotsford, BC			
2024	Bell Front Shopping Centre, 366 North Front Street, Unit 25, Belleville, ON			
2025	Boardwalk Shopping Centre, 225 The Boardwalk, Unit #2, Kitchener, ON			
2026	Grant Crossing, 5487 Hazeldean Road, Unit 2, Stittsville, ON			
2027	1876 Cooper Road, Kelowna, BC			
2028	Columbia Square Shopping Centre, 300-500 Notre Dame Drive, Kamloops, BC			
2031	Village Mall, 430 Topsail Road, St. John's, NF			
2038	Queensway 427 Centre, 1602 The Queensway, Toronto, ON			
2039	3-221 Henry Street Brantford Bell Centre, Brantford, ON			
2043	Grasslands, 4855 Gordon Road, Regina, SK			
2044	Station Square, 6200 McKay Avenue, Unit 240, Burnaby,			
2045	Heritage Greene Shopping Center, 1783 Stone Church Road East, Unit 2, Stoney Creek, ON			
2049	Riocan Colossus Centre, 67 Colossus Drive, Unit D10,			
2051	1740 West Broadway, Vancouver, BC			
2052	Halifax Bayers Lake Centre, 208 Chain Lake Drive, Halifax,			
2053	Preston Crossing, 1707 Preston Avenue North, Saskatoon,			
2057	Township Shopping Centre, 22207 Macleod Trail Southeast, Calgary, AB			
3701	South Edmonton Common, 2017 98th Street NW, Edmonton,			
3702	Riocan Thickson Ridge Centre, 1650 Victoria Street East, Unit #1, Whitby, ON			
3703	67 Colossus Dr, Woodbridge, ON			
3704	Langley City Square, Unit 110 - 19860 Langley Bypass,			
3706	West Edmonton Mall, 8882 170 Street, Suite 2049,			
3707	880 St James St, Winnipeg, MB			
3708	Wonderland Gateway Centre, 3325 Wonderland Road, Unit #2, London, ON			
3709	Brentwood Village (Calgary), 3630 Brentwood Road,			
3711	240 Leighland Ave, Oakville, ON			
3712	710 - 80 Longview Common SE, Calgary, AB			
2015	Dartmouth Crossing, 45 Leclair Row, Dartmouth, NS			
2017	Charlottetown, 193 Minna Jane Drive, Charlottetown, PEI			
2029	Corbett Centre, 15 Trinity Ave. Building C, Fredericton, NB			
2034	The Uptown Market, 3995 Highway #7 East, Markham, ON			
2036	Mapleton Centre, 79 Wyse Street, Moncton, NB			
2033	Mayfair, 775 Finlayson Street, Victoria, BC			
TOTAL	---			

**SCHEDULE “D”
GST/HST CERTIFICATE, UNDERTAKING AND INDEMNITY**

TO: BED BATH & BEYOND CANADA L.P. (the “Assignor”)

RE: Omnibus Assignment and Assumption of Leases dated _____ 2023 made between the Assignor, 11607987 Canada Inc. dba DKB Capital (the “Assignee”) and Bed Bath & Beyond Inc., as amended from time to time (the “Agreement”).

In consideration of the Agreement, the Assignee hereby certifies and agrees as follows:

- (a) the Assignee is duly registered under Subdivision (d) of Division V of Part IX of the *Excise Tax Act*, R.S.C., 1985, c. E-15, as amended, restated, supplemented or substituted from time to time (the “**Excise Tax Act**”) with respect to the goods and services tax and harmonized sales tax, and that its registration number is: [●], which registration shall be in full force and effect and shall not have been cancelled or revoked on the Closing Date;
- (b) the Assignee has entered into the Agreement, and the Assigned Interest is being assigned to the Landlord on the Closing Date, as principal for its own account and not as an agent, nominee, trustee or otherwise on behalf of or for another Person (as defined in the Excise Tax Act);
- (c) to the extent permitted under subsection 221(2) of the Excise Tax Act and any equivalent or corresponding provision under any applicable provincial or territorial legislation, the Assignee shall self-assess and remit directly to the appropriate governmental authority any taxes including goods and services tax or harmonized sales tax, as the case may be, imposed under the Excise Tax Act and any similar value added or multi-staged tax or sales tax imposed by any applicable provincial or territorial legislation payable in connection with the Assignment;
- (d) the Assignee shall make and file all required return(s) in accordance with the requirements of subsection 228(4) of the Excise Tax Act and any equivalent or corresponding provision under any applicable provincial or territorial legislation; and
- (e) the Assignee shall indemnify and save the Assignor harmless from and against any and all goods and services tax or harmonized sales tax, as the case may be, imposed under the Excise Tax Act and any similar value added or multi-staged tax or sales tax, penalties, costs and/or interest which may become payable by or assessed against the Assignor as a result of any failure by the Assignor to collect and remit any goods and services tax or harmonized sales tax payable under the Excise Tax Act or any similar value added or multi-staged tax or sales tax and applicable on the Assignment or as a result of any inaccuracy, misstatement or misrepresentation made by the Assignee on the Closing Date in connection with any matter raised in this GST/HST Certificate, Undertaking and Indemnity or any failure by the Assignee to comply with the provisions of this GST/HST Certificate, Undertaking and Indemnity.

Capitalized terms used in this GST/HST Certificate, Undertaking and Indemnity and not defined herein shall have the meanings ascribed to them in the Agreement.

This GST/HST Certificate, Undertaking and Indemnity may be executed in counterpart and transmitted by electronic means and that the reproduction of such signatures will be treated as though such reproduction were executed originals.

DATED _____, 2023

**11607987 CANADA INC. dba DKB
CAPITAL**

By: _____

Name:

Title:

By: _____

Name:

Title:

THIS IS **CONFIDENTIAL EXHIBIT “G”** REFERRED TO IN THE AFFIDAVIT OF WADE HADDAD SWORN BEFORE ME over video teleconference this 5th day of April, 2023 pursuant to O. Reg 431/20, Administering Oath or Declaration Remotely. The affiant was located in the City of Union, in the State of New Jersey while the Commissioner was located in the City of Toronto, in the Province of Ontario.



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

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.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF WADE HADDAD

OSLER, HOSKIN & HARCOURT LLP
100 King Street West, 1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

Marc Wasserman (LSO# 44066M)
Shawn Irving (LSO# 50035U)
Dave Rosenblat (LSO# 64586K)
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 11 TH
)	
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 AND APPROVAL & 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 [●], 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 [●], 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

counterparties to the 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 counterparty with respect to a Lease, nothing herein shall affect the rights and remedies of such counterparty 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 all of the Encumbrances affected or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets; and

(c) the counterparties to the 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 of:

- (i) any defaults arising solely from the insolvency of the BBB Entities or any of their affiliates;
- (ii) the commencement of these CCAA proceedings;
- (iii) any restriction, condition or prohibition contained in any such Lease relating to the assignment thereof or any change in control; or
- (iv) BBB L.P. having breached a non-monetary obligation under the Lease (unless (A) otherwise agreed to by the applicable Purchaser; or (B) with respect to a 4(a) Lease: (i) a non-monetary breach arises or continues after the 4(a) 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 counterparty to 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, in addition to all obligations under a 4(a) Lease arising from and after the delivery of the applicable Monitor's Certificate (the "**Closing Date**"), for which the applicable Purchaser shall be liable (which, for greater certainty, does not include any rent payments arising from the period prior to the Closing Date), the applicable Purchaser shall be liable for and shall timely pay to the counterparty under such 4(a) Lease the Cure Costs (as defined below), if any, in respect of such 4(a) Lease on the Closing Date or such later date as may be agreed to by the applicable Purchaser and the counterparty. For the purposes of this paragraph, "Cure Costs" means monetary defaults in relation to a 4(a) Lease, if any, other than payment obligations that arise solely by reason of (i) unpaid rent payment due and owing under any 4(a) Lease for the period prior to the Closing Date, (ii) the insolvency of the BBB Entities, (iii) the commencement of these CCAA proceedings, or (iv) any failure of BBB L.P. to perform a non-monetary obligation under such Lease, which shall be in an amount agreed to by BBB L.P. (in

consultation with the applicable Purchaser), the Monitor, and the counterparty to such Lease or as otherwise determined by further order of the Court.

6. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the proceeds, net of the listing agent fee 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 counterparty to 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 counterparties to 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 counterparty to the Lease.

9. **THIS COURT ORDERS** that Confidential Exhibit "●" 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 this Honourable 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.

11. **THIS COURT ORDERS** that the Monitor may rely on written notice from each applicable Purchaser and BBB L.P. regarding the satisfaction or waiver of conditions to closing under each applicable Assignment Agreement and shall have no liability with respect to delivery of the Monitor's Certificates.

GENERAL

12. **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.

13. **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.

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

15. **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.

16. **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"
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 July 26, 2011 between Riotrin Properties (Hazeldean) Inc. and BBB LP (Grant Crossing, 5487 Hazeldean Road, Unit 2, Stittsville, ON - Store 2026);
- (e) 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);
- (f) 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);
- (g) Lease dated July 29, 2015, between Riokim Holdings (Ontario) Inc. and BBB LP (Riocan Thicksen Ridge Centre, 1650 Victoria Street East, Unit #1, Whitby, ON - Store 3702);
- (h) 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 July 26, 2010 between Z99999 Holdings Ltd., as successor-in-interest to Penvest Realty Limited and First Capital Holdings Trust, and BBB LP (West Oaks Shopping Centre, 32700 South Fraser Way, Unit 65, Abbotsford, BC - Store 2023);
- (e) 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);
- (f) Lease dated June 29, 2010 between The INCC Corp. and BBB LP (Boardwalk Shopping Centre, 225 The Boardwalk, Unit #2, Kitchener, ON - Store 2025);
- (g) Lease dated March 13, 2012 between Mayfair Shopping Centre Limited Partnership and BBB LP (Mayfair Shopping Center, 775 Finlayson Street, Victoria, BC - Store 2033);
- (h) Lease dated June 8, 2011 between McIntosh Properties Ltd. and BBB LP (Orchard Shopping Centre, 1876 Cooper Road, Kelowna, BC - Store 2027);
- (i) 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);
- (j) 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);
- (k) Lease dated August 21, 2012 between Queensway 427 Centre Inc. and BBB LP (Queensway 427 Centre, 1602 The Queensway, Toronto, ON - Store 2038);
- (l) Lease dated July 31, 2013 between Harvard Developments Inc. and BBB LP (Grasslands, 4855 Gordon Road, Regina, SK - Store 2043);
- (m) Lease dated May 14, 2014 between AB Metro Properties Ltd. and BBB LP (Station Square, 6200 McKay Avenue, Unit 240, Burnaby, BC - Store 2044);
- (n) Lease dated June 2, 2014 between Heritage Greene Development Corporation and BBB LP (Heritage Greene Shopping Center, 1783 Stone Church Road East, Unit 2, Stoney Creek, ON - Store 2045);
- (o) Lease dated August 29, 2015 between West Broadway Centre Ltd. and BBB LP (1740 West Broadway, Vancouver, BC - Store 2051);
- (p) Lease dated April 15, 2017 between Preston West Properties Ltd. and BBB LP (Preston Crossing, 1707 Preston Avenue North, Saskatoon, SK - Store 2053);

- (q) Lease dated May 13, 2019 between ROYOP (Legacy) Development Ltd. and BBB LP (Township Shopping Centre, 22207 Macleod Trail Southeast, Calgary, AB - Store 2057);
- (r) 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);
- (s) 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);
- (t) 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);
- (u) 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 AND APPROVAL &
VESTING ORDER**

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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

**MOTION RECORD OF THE APPLICANT
(Motion for Assignment and Approval & Vesting Order)**

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