

**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

**SUPPLEMENTAL AFFIDAVIT OF HOLLY ETLIN**

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

1. I am the Interim CFO of BBBI, the ultimate parent corporation of BBB Canada. I have served in the capacity of Interim CFO of BBBI since February 2, 2023. I am also a Managing Director at AlixPartners. AlixPartners has served as the financial advisor to the Bed Bath & Beyond Group since 2022. I have worked in various positions at AlixPartners since 2007. I have more than 30 years of experience in providing turnaround services for companies in the retail, distribution, consumer products, financial services, media, and hospitality industries and have frequently been appointed as Interim CEO, Interim CFO, and Chief Restructuring Officer of these businesses. I am admitted to the American College of Bankruptcy and the International Insolvency Institute and am a Certified Turnaround Professional.

2. I am familiar with the Bed Bath & Beyond Group's day-to-day operations, business and financial affairs, and books and records and have personal knowledge of the matters deposed to in this Affidavit. Where I have relied on other sources for information, I have stated the source of my

information and I believe such information to be true. In preparing this Affidavit, I consulted with BBB Canada's legal, financial, and other advisors and with other members of BBB Canada's and BBBI's senior management teams.

3. I swear this Affidavit supplemental to my previous Affidavit, sworn February 15, 2023 (the "**Comeback Affidavit**") to update the Court on:

- (a) certain amendments to: (i) the draft ARIO which have been agreed by BBB Canada; and (ii) the Consulting Agreement which have been agreed by BBB Canada and the Consultant, based on discussions with counsel for various landlords representing, in total, 27 of BBB Canada's current leases; and
- (b) an updated bid which was received by BBB Canada after it served its comeback motion record (the "**Comeback Motion Record**").

4. Capitalized terms used but not otherwise defined herein have the meanings given to such terms in my Comeback Affidavit.

5. With respect to the ARIO, following discussions with, and based on feedback from, counsel for various landlords, BBB Canada is seeking a revised form of ARIO amending the stay of proceedings against BBBI relating to the BBBI Indemnities to expressly provide that any such landlord claims will be unaffected by any determination (including any findings of fact, mixed fact and law or conclusions of law) of any rights, remedies and claims of such landlords as against BBB Canada, whether made in these CCAA proceedings or in any subsequent proposal or bankruptcy proceedings under the BIA, other than that any recoveries under such proceedings received by such landlords, which recoveries shall constitute a reduction and offset to such claim.

Attached as **Exhibit “A”** is the revised draft ARIO being sought by BBB Canada. Attached as **Exhibit “B”** is the revised draft ARIO blacklined against the version appended at Tab 3 to the Comeback Motion Record.

6. With respect to the Consulting Agreement, in response to feedback provided by counsel to the various landlords, BBB Canada and the Consultant have agreed to amend and restate the Consulting Agreement to:

- (a) remove the provision in the Sale Guidelines regarding the Consultant’s supplementation of the Merchandise in the retail stores with Additional Consultant Goods, and instead add that language to the Consulting Agreement; and
- (b) limit such Additional Consultant Goods sold as part of the liquidation sale to \$10 million at cost in the aggregate, with no store receiving Additional Consultant Goods at a cost in excess of \$750,000.

Attached as **Exhibit “C”** is a copy of the Amended and Restated Consulting Agreement, together with a blackline to the prior version of the Consulting Agreement attached as Exhibit F to my Comeback Affidavit.

7. Since BBB Canada served its Comeback Motion Record on February 15, 2023, BBB Canada received a revised bid from one of the three potential acquirors previously contacted by Lazard and who had expressed interest in the Canada-only operations. The bid remained subject to a number of terms and conditions. Since receipt, and continuing to the present, BBB Canada and Lazard have engaged extensively with the potential acquiror to advance the bid, however no

acceptable or implementable transaction has been agreed to date. At all times, the Monitor has been kept apprised of the status of ongoing discussions.

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

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



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Holly Etlin

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



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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE ) TUESDAY, THE 21<sup>ST</sup>  
 )  
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**”), any Landlord claim pursuant to an indemnity, guarantee or surety executed by BBBI in relation to any BBB Entity (i) 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) shall be unaffected by any determination (including any findings of fact, mixed fact and law or conclusions of law) 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](http://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 Confidential Exhibit “G” to the Second Etlin Affidavit shall be and is hereby sealed, kept confidential and shall not form part of the public record pending further Order of this Court.

56. **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.

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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

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at Toronto

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**AMENDED & RESTATED INITIAL ORDER**

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**OSLER, HOSKIN & HARCOURT, LLP**

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

Lawyers for the Applicant

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



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

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE ) TUESDAY, THE 21<sup>ST</sup>  
 )  
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 ~~and~~, 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; ~~provided, however,~~

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**”), any Landlord claim pursuant to ~~an indemnity,~~ guarantee or surety executed by BBBI in relation to any BBB Entity (i) 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) shall be unaffected by any determination (including any findings of fact, mixed fact and law or conclusions of law) 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. ~~17.~~ **THIS COURT ORDERS** that, to the extent any prescription, time or limitation period relating to any Proceeding against or in respect of the BBB Entities that is stayed pursuant to this Order may expire, the term of such prescription, time or limitation period shall hereby be deemed to be extended by a period equal to the Stay Period.

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

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

investigations, actions, suits or proceedings by a regulatory body as are permitted by section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

## **NO INTERFERENCE WITH RIGHTS**

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

## **CONTINUATION OF SERVICES**

21. ~~20.~~ **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with any BBB Entity or statutory or regulatory mandates for the supply or license of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, cash management services, payroll and benefit services, insurance, freight services, transportation services, customs clearing, warehouse and logistics services, security services, management services, merchandise sourcing services, procurement services, utility or other services to the BBB Entities or the Business, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply or license of such goods or services, trademarks and other intellectual property as may be required by the BBB Entities, and that the BBB Entities shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case, that the normal prices or charges for all such goods or services received after the date of this Order are paid by the BBB Entities in accordance with normal payment practices of the BBB Entities or such other practices as may be agreed upon by the supplier or service provider and the applicable BBB Entity and the Monitor, or as may be ordered by this Court.

## NON-DEROGATION OF RIGHTS

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

## WAGE EARNER PROTECTION PROGRAM ACT

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

## APPROVAL OF KEY EMPLOYEE RETENTION PLAN

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

25. ~~24.~~ **THIS COURT ORDERS** that the key employees referred to in the KERP (the “**Key Employees**”) shall be entitled to the benefit of and are hereby granted a charge on the Property (the “**KERP Charge**”), which charge shall not exceed the aggregate amount of \$161,000, to secure any payments to the Key Employees under the KERP. The KERP Charge shall have the priority set out in paragraphs 389 and 401 herein.

## PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

26. ~~25.~~ **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any

of the former, current or future directors or officers of the BBB Entities with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the BBB Entities whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the BBB Entities, if one is filed, is sanctioned by this Court or is refused by the creditors of the BBB Entities or this Court.

## **DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**

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

28. ~~27.~~ **THIS COURT ORDERS** that the directors and officers of the BBB Entities shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of \$8,250,000, unless permitted by further Order of this Court, as security for the indemnity provided in paragraph ~~26~~7 of this Order. The Directors' Charge shall have the priority set out in paragraphs ~~389-401~~ herein.

29. ~~28.~~ **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (i) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (ii) the BBB Entities' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph ~~26~~7 of this Order.

## **APPOINTMENT OF MONITOR**

30. ~~29.~~ **THIS COURT ORDERS** that A&M is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the BBB Entities with the powers and obligations set out in the CCAA or set forth herein and that the BBB Entities and their shareholders or partners (as applicable), officers, directors, and Assistants

shall advise the Monitor of all material steps taken by the BBB Entities pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

31. ~~30.~~ **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

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

- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (i) perform such other duties as are required by this Order or by this Court from time to time.

32. ~~31.~~ **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

33. ~~32.~~ **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

34. ~~33.~~ **THIS COURT ORDERS** that the Monitor shall provide any creditor of the BBB Entities with information provided by the BBB Entities in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the BBB Entities

is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the BBB Entities may agree.

35. ~~34.~~ **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, neither the Monitor nor its employees and representatives acting in such capacities shall incur any liability or obligation as a result of the Monitor's appointment or the carrying out by it of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

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

37. ~~36.~~ **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

#### **ADMINISTRATION CHARGE**

38. ~~37.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and counsel to the BBB Entities shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$1,250,000 unless permitted by further Order of this Court, as security for their professional fees and disbursements incurred at their standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 389 and 401 herein.

**VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

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

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

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

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

40. ~~39.~~ **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge, the Directors' Charge or the KERP Charge (together, the "**Charges**") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

41. ~~40.~~ **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person notwithstanding the order of perfection or attachment.

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

43. ~~42.~~ **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "**Chargees**") thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of

creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan document, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds any of the BBB Entities and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges shall not create or be deemed to constitute a breach by any BBB Entity of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and
- (c) the payments made by the BBB Entities pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

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

#### **SERVICE AND NOTICE**

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

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

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

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

49. ~~48.~~ **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol or the CCAA and the regulations thereunder is not practicable (including as a result of COVID-19), the BBB Entities, the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or electronic message to the BBB Entities’ creditors or other interested parties at their respective addresses (including e-mail addresses) as last shown in the books and records of the BBB Entities and that any such service,

distribution or notice shall be deemed to be received on the earlier of (a) the date of forwarding thereof, if sent by electronic message on or prior to 5:00 p.m. Eastern Standard/Daylight Time (or on the next business day following the date of forwarding thereof if sent on a non-business day); (b) the next business day following the date of forwarding thereof, if sent by courier, personal delivery, facsimile transmission or electronic message sent after 5:00 p.m. Eastern Standard/Daylight Time; or (c) on the third business day following the date of forwarding thereof, if sent by ordinary mail.

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

## **GENERAL**

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

52. ~~51.~~ **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of any of the BBB Entities, the Business or the Property.

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

United States, to give effect to this Order and to assist the BBB Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies and agencies are hereby respectfully requested to make such orders and to provide such assistance to the BBB Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the BBB Entities and the Monitor and their respective agents in carrying out the terms of this Order.

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

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

56. ~~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.

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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

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**COMMERCIAL LIST**

Proceeding commenced at Toronto

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**AMENDED & RESTATED INITIAL ORDER**

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**OSLER, HOSKIN & HARCOURT, LLP**  
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Toronto, ON M5X 1B8

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

Lawyers for the Applicant

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



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

## AMENDED & RESTATED CONSULTING AGREEMENT

This Amended & Restated Consulting Agreement, dated as of February 20, 2023 (this “Agreement”) is made by and between **BED BATH & BEYOND CANADA L.P.** (the “Merchant”) and a contractual joint venture comprised of **HILCO MERCHANT RETAIL SOLUTIONS ULC, GORDON BROTHERS CANADA ULC, TIGER ASSET SOLUTIONS CANADA, ULC,** and **B. RILEY RETAIL CANADA ULC** (each a company organized under the laws of its province of organization, and affiliated respectively with Hilco Merchant Resources, LLC with a principal place of business located at 5 Revere Drive, Suite 206, Northbrook, IL 60062), Gordon Brothers Retail Partners, LLC with a principal place of business located at 800 Boylston Street, 27<sup>th</sup> Floor, Boston, MA 02199, Tiger Capital Group, LLC, with a principal place of business located at 60 State Street, Boston, MA 02109, and B. Riley Retail Solutions, LLC, with a principal place of business located at 21255 Burbank Blvd., Suite 400 Woodland Hills, CA 91367 (collectively, the “Consultant”, and together with the Merchant, the “Parties” and each a “Party”), under which Consultant shall act as the exclusive consultant for the purpose of conducting a sale of certain Merchandise (as defined below) at the Merchant’s stores set forth on Exhibit 1A (each a “Store”, and collectively the “Stores”) and Merchant’s warehouse set forth on Exhibit 1B annexed hereto (the “Warehouse”) through a “Store Closing”, “Everything Must Go”, “Everything on Sale” or similar themed sale (the “Sale”) in accordance with the terms of the sale guidelines substantially in the form attached hereto as Exhibit B (the “Sale Guidelines”). Only Merchant-approved Sale terminology, including the foregoing advertising handles, will be utilized at each Store.

This Agreement amends and restates, in its entirety, the Consulting Agreement dated February 15, 2023, together with all exhibits and schedules attached thereto or incorporated therein, among the Parties.

### RECITALS:

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

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

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

#### **A. Merchandise**

For purposes hereof, “Merchandise” shall mean all inventory that is owned by Merchant and actually sold in the Stores during the Sale Term (as defined below), the aggregate amount of which shall be determined using the gross rings inventory taking method, which may include inventory that (i) is located at, or in transit to the Stores as of the Sale Commencement Date, and/or (ii) is located at the Merchant’s Warehouse and is earmarked for sale in the Stores by the Merchant prior to the Sale Commencement Date; provided, however, the Merchant and the Consultant agree that “Merchandise” shall expressly exclude: (1) goods which belong to sublessees, licensees or concessionaires of Merchant; (2) goods held by the Merchant on memo or consignment, unless otherwise agreed to by Merchant and Consultant; (3) owned furnishings, trade fixtures, equipment, machinery, office supplies, conveyor systems, racking, rolling stock, any vehicles or other modes of transportation, and other personal property (collectively, “FF&E”), or improvements to real property, that

are located in the Stores, Warehouse, and corporate office located in Mississauga, Ontario (the “Corporate Office”); (4) damaged or defective merchandise that cannot be sold; (5) Additional Consultant Goods; and (6) gift cards (third party and Merchant branded).

**B. Sale Term**

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

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

**C. Project Management**

1) Consultant’s Undertakings

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

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

expenses, in accordance with and subject to the Expense Budget (collectively, the “Supervisor Costs”). The Supervisor Costs set forth in the Expense Budget include, among other things, industry standard deferred compensation. The Merchant shall reimburse Consultant for all Supervisor Costs weekly, based upon invoices or other documentation reasonably satisfactory to the Merchant and the Monitor.

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

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

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

2) Merchant’s Undertakings

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

Merchant shall provide throughout the Sale Term central administrative services necessary for the Sale, including (without limitation) customary POS administration, sales audit, cash reconciliation, accounting, and payroll processing, as currently available through the Merchant’s existing accounting and IT systems, all at no cost to Consultant.

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

**D. The Sale**

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

**E. Consultant Fee and Expenses in Connection with the Sale**

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

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

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

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

Merchant shall be responsible for all expenses of the Sale, including (without limitation) all Store level operating expenses, all costs and expenses related to Merchant’s other retail store operations, and all of Consultant’s documented out of pocket expenses (the “Costs”). To control Costs, Merchant and Consultant have established an aggregate budget (the “Expense Budget”) of certain delineated expenses, including (without limitation) payment of the costs of supervision (including (without limitation) Supervisors’ wages, fees, travel, and deferred compensation), advertising and signage costs, and other miscellaneous expenses incurred by Consultant, including reasonable legal fees. The Expense Budget for the Sale is attached hereto

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

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

#### **F. Furniture, Fixtures and Equipment**

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

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

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

#### **G. Payments & Accounting**

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

The Parties shall, in consultation with the Monitor, complete a final reconciliation and settlement of all amounts payable pursuant to this Agreement (including, without limitation, the determination of the Consultant Incentive Fee, Costs, FF&E Commission, FF&E Costs and all other fees, expenses, or other

amounts reimbursable or payable hereunder) no later than forty five (45) days following (a) the Sale Termination Date for the last Store (the “Final Reconciliation”), or (b) the date upon which this Agreement is terminated in accordance with its terms. Within ten (10) days after the Final Reconciliation, (a) any amounts that are determined to be owing by Merchant to the Consultant shall be paid by the Merchant to the Consultant, and (b) any amounts that are determined to be owing by the Consultant to the Merchant as a result of any overpayments shall be paid by the Consultant to the Merchant.

#### **H. Additional Consultant Goods.**

Subject to the Approval Order, Consultant shall have the right to supplement the Merchandise in the Sale at the Stores with additional goods procured by Consultant which are of like kind, and no lesser quality to the Merchandise in the Sale at the Stores (“Additional Consultant Goods”); provided, however, that: (i) the Additional Consultant Goods sold as part of the Sale will not exceed \$10,000,000 at cost in the aggregate; (ii) the Additional Consultant Goods are of like kind and category and no lesser quality to the Merchandise, and consistent with any restriction on usage of the Stores set out in the applicable Leases; and (iii) the Additional Consultant Goods will be distributed amongst the Stores such that no Store receives Additional Consultant Goods at a cost in excess of \$750,000. The Additional Consultant Goods shall be purchased by Consultant as part of the Sale, and delivered to the Stores. Sales of Additional Consultant Goods shall be run through Merchant’s cash register systems; provided, however, that Merchant shall assist with marking, and Consultant shall mark the Additional Consultant Goods, using either a “dummy” SKU or department number, or in such other manner so as to distinguish the sale of Additional Consultant Goods from the sale of Merchandise. Consultant and Merchant shall also cooperate so as to ensure that the Additional Consultant Goods are marked in such a way that a reasonable consumer could identify the Additional Consultant Goods as non-Merchant goods. Additionally, Consultant shall provide signage in the Stores notifying customers that the Additional Consultant Goods have been included in the Sale.

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

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

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

security interest in and lien upon such Additional Consultant Goods and Additional Consultant Goods proceeds).

## **I. Indemnification**

### 1) Merchant's Indemnification

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

### 2) Consultant's Indemnification

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

## **J. Insurance**

### 1) Merchant's Insurance Obligations

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

throughout the Sale Term, in such amounts as it currently has in effect, workers compensation insurance in compliance with all statutory requirements.

2) Consultant's Insurance Obligations

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

**K. Representations, Warranties, Covenants and Agreements**

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

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

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

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

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

#### **L. Termination**

The following shall constitute “Termination Events” hereunder:

1) Merchant’s or Consultant’s failure to perform any of their respective material obligations hereunder, which failure shall continue uncured seven (7) days after receipt of written notice thereof to the defaulting Party (an “Event of Default”);

2) Any representation or warranty made by Merchant or Consultant is untrue in any material respect as of the date made or at any time and throughout the Sale Term; or

3) The Sale is terminated or materially interrupted or impaired for any reason, including but not limited to an order of the Court, other than as a result of an Event of Default by Consultant or Merchant.

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

#### **M. Notices**

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

**N. Independent Consultant**

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

**O. Non-Assignment**

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

**P. Severability**

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

**Q. Governing Law, Venue, Jurisdiction and Jury Waiver**

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

**R. Entire Agreement**

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

**S. Execution**

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

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

**T. Canadian Dollars**

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

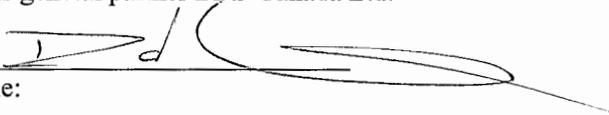
**V. Choice of Language.** The parties have specifically required that this Agreement and all related documents be drafted and executed in English. *Les parties aux présentes ont formellement demandé à ce que la présente convention et tous les documents auxquels celle-ci réfère soient rédigés et signés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

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

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

**MERCHANT:**

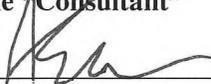
**BED BATH & BEYOND CANADA L.P.,**  
By its general partner BBB Canada Ltd.

By:   
Name:  
Its:

*[Signatures continued next page]*

**CONSULTANT:**

**HILCO MERCHANT RETAIL SOLUTIONS ULC**  
**For the "Consultant"**

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

**Exhibit “1A”**

**List of Stores**

**Bed Bath & Beyond.2023.Canada  
Exhibit A**

**Store List**

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

**Bed Bath & Beyond.2023.Canada  
Exhibit A**

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

**Exhibit 1B**  
**List of Warehouse(s)**

**2975 Argentia Road**  
**Misissauga, ON**

**Exhibit “B”**

**Sale Guidelines**

## SALE GUIDELINES

The following procedures shall apply to the sale (the “**Sale**”) of merchandise, furniture, fixtures and equipment at Bed Bath & Beyond Canada L.P.’s (“**Merchant**”) retail stores (collectively, the “**Stores**”).

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

1. Except as otherwise expressly set out herein, and subject to: (i) the Order of the Court granted on February [ ], 2023 in the CCAA Proceedings (the “**Approval Order**”), approving the Consulting Agreement between a contractual joint venture comprised of Hilco Merchant Retail Solutions, ULC, Gordon Brothers Canada ULC, Tiger Asset Solutions, ULC, and B. Riley Retail Canada, ULC (collectively, “**Consultant**”) and Merchant, dated February 20, 2023 (the “**Consulting Agreement**”) and the transactions contemplated thereunder, (ii) any further Order of the Court, or (iii) any subsequent written agreement between Merchant and its applicable landlord(s) (individually, a “**Landlord**” and, collectively, the “**Landlords**”) and approved by Consultant, the Sale shall be conducted in accordance with the terms of the applicable leases/or other occupancy agreements for each of the affected Stores (individually, a “**Lease**” and, collectively, the “**Leases**”). However, nothing contained herein shall be construed so as to create or impose upon Merchant or Consultant any additional restrictions not contained in the applicable Lease.
2. The Sale shall be conducted so that each of the Stores remain open during their normal hours of operation provided for in the respective Leases for the Stores until the applicable premises vacate date for each Store under the Consulting Agreement (the “**Vacate Date**”), and in all cases no later than April 30, 2023 (such date, or such other date as determined in accordance with the Approval Order, the “**Sale Termination Date**”). Rent payable under the respective Leases shall be paid as provided in the Initial Order.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws and regulations, unless otherwise set out herein or ordered by the Court.
4. All display and hanging signs used by Consultant in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, Consultant may advertise the Sale at the Stores as a “everything on sale”, “everything must go”, “store closing” or similar theme sale at the Stores (provided, however, that no signs shall advertise the Sale as a “bankruptcy”, a “liquidation” or a “going out of business” sale, it being understood that the French equivalent of “clearance” is “liquidation” and is permitted to be used). Forthwith upon request from a Landlord, the Landlord’s counsel, Merchant or the Monitor, Consultant shall provide the proposed signage packages along with proposed dimensions by email or facsimile to the applicable Landlords or to their counsel of record and the applicable Landlord shall notify Consultant of any requirement for such signage to otherwise comply with the terms of the Lease and/or the Sale Guidelines and where the provisions of the Lease conflicts with these Sale Guidelines, these Sale Guidelines shall govern. Consultant shall not use neon or day-glow signs or any handwritten signage (save that handwritten “you pay” or “topper” signs may be used). If a Landlord is concerned with “Store Closing” signs being placed in the front window of a Store or with the number or size of the signs in the front window, Merchant, Consultant and the Landlord will work together to resolve the dispute. Furthermore, with respect to enclosed mall Store locations without a separate entrance from the exterior of the enclosed mall, no exterior signs or signs in common areas of a mall shall be used unless explicitly permitted by the applicable Lease. In addition, Consultant shall be permitted to utilize exterior banners/signs at stand alone or strip mall Stores or enclosed mall Store locations with a separate entrance from the exterior of the enclosed mall; provided, however, that: (i) no signage in

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

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

## Exhibit “C”

### Expense Budget

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

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

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

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

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

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

**Bed Bath & Beyond.2023.Canada**  
**Exhibit C**

<b>Expense Budget (1)</b>
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In CAD

**Advertising**

Media	322,279
Signs (2)	785,405
Sign Walkers	996,656
Subtotal Advertising	<u>2,104,341</u>

**Supervision**

Fees / Wages / Expenses (3)	<u>1,824,707</u>
Subtotal Supervision	<u>1,824,707</u>

Miscellaneous /Legal (4)	25,000
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Total Expenses	<u><u>3,954,047</u></u>
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**Notes:**

1. This Expense Budget contemplates a sale term of February, 21, 2023 through April 30, 2023. The Expense Budget remains subject to modification in the event that this term is extended, or as otherwise agreed to by the parties.
2. Includes Sales Tax.
3. Includes Deferred Compensation and Insurance.
4. Any legal expenses associated with issues raised by or disputes with landlords, including (without limitation) negotiations in respect of landlord side letters, shall be in addition to and not part of the budgeted legal expenses.



AMENDED & RESTATED CONSULTING AGREEMENT

This Amended & Restated Consulting Agreement, dated as of February ~~15~~<sup>20</sup>, 2023 (this “Agreement”) is made by and between **BED BATH & BEYOND CANADA L.P.** (the “Merchant”) and a contractual joint venture comprised of **HILCO MERCHANT RETAIL SOLUTIONS ULC, GORDON BROTHERS CANADA ULC, TIGER ASSET SOLUTIONS CANADA, ULC,** and **B. RILEY RETAIL CANADA ULC** (each a company organized under the laws of its province of organization, and affiliated respectively with Hilco Merchant Resources, LLC with a principal place of business located at 5 Revere Drive, Suite 206, Northbrook, IL 60062), Gordon Brothers Retail Partners, LLC with a principal place of business located at 800 Boylston Street, 27<sup>th</sup> Floor, Boston, MA 02199, Tiger Capital Group, LLC, with a principal place of business located at 60 State Street, Boston, MA 02109, and B. Riley Retail Solutions, LLC, with a principal place of business located at 21255 Burbank Blvd., Suite 400 Woodland Hills, CA 91367 (collectively, the “Consultant”, and together with the Merchant, the “Parties” and each a “Party”), under which Consultant shall act as the exclusive consultant for the purpose of conducting a sale of certain Merchandise (as defined below) at the Merchant’s stores set forth on Exhibit 1A (each a “Store”, and collectively the “Stores”) and Merchant’s warehouse set forth on Exhibit 1B annexed hereto (the “Warehouse”) through a “Store Closing”, “Everything Must Go”, “Everything on Sale” or similar themed sale (the “Sale”) in accordance with the terms of the sale guidelines substantially in the form attached hereto as Exhibit B (the “Sale Guidelines”). Only Merchant-approved Sale terminology, including the foregoing advertising handles, will be utilized at each Store.

This Agreement amends and restates, in its entirety, the Consulting Agreement dated February 15, 2023, together with all exhibits and schedules attached thereto or incorporated therein, among the Parties.

**R E C I T A L S :**

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

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

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

**A. Merchandise**

For purposes hereof, “Merchandise” shall mean all inventory that is owned by Merchant and actually sold in the Stores during the Sale Term (as defined below), the aggregate amount of which shall be determined using the gross rings inventory taking method, which may include inventory that (i) is located at, or in transit to the Stores as of the Sale Commencement Date, and/or (ii) is located at the Merchant’s Warehouse and is earmarked for sale in the Stores by the Merchant prior to the Sale Commencement Date; provided, however, the Merchant and the Consultant agree that “Merchandise” shall expressly exclude: (1) goods which belong to sublessees, licensees or concessionaires of Merchant; (2) goods held by the Merchant on memo or consignment, unless otherwise agreed to by Merchant and Consultant; (3) owned furnishings, trade fixtures, equipment, machinery, office supplies, conveyor systems, racking, rolling stock, any vehicles or other modes of transportation, and other personal property (collectively, “FF&E”), or improvements to

real property, that are located in the Stores, Warehouse, and corporate office located in Mississauga, Ontario (the “Corporate Office”); (4) damaged or defective merchandise that cannot be sold; (5) Additional Consultant Goods; and (6) gift cards (third party and Merchant branded).

**B. Sale Term**

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

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

**C. Project Management**

1) Consultant’s Undertakings

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

The Consultant shall provide qualified supervision to oversee the conduct of the Sale in the Stores as may be required to maximize sales, the expense for which is included in the Expense Budget (defined below). In connection with the Sale, the Consultant shall indirectly retain and engage the Supervisors. The Supervisors shall not be deemed to be employees or consultants of the Merchant in any manner whatsoever; nor do the Supervisors have any relationship with the Merchant by virtue of this Agreement or otherwise which creates any liability or responsibility on behalf of the Merchant for the Supervisors. During the Sale Term, the Supervisors shall perform the services provided for herein during normal Store operating hours and for the period of time prior to the Stores opening and subsequent to the Stores closing, as required in connection with the Sale, in the Consultant’s discretion. In consideration of

Consultant's engagement of the Supervisors, the Merchant agrees to pay the Consultant, as a Sale Cost (defined below), the Supervisor-related wages, fees paid to arm's length third parties, travel, expenses, deferred compensation and third-party payroll costs and expenses, in accordance with and subject to the Expense Budget (collectively, the "Supervisor Costs"). The Supervisor Costs set forth in the Expense Budget include, among other things, industry standard deferred compensation. The Merchant shall reimburse Consultant for all Supervisor Costs weekly, based upon invoices or other documentation reasonably satisfactory to the Merchant and the Monitor.

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

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

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

## 2) Merchant's Undertakings

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

quiet use and enjoyment of the Stores for the Sale Term in order to perform its obligations under this Agreement.

Merchant shall provide throughout the Sale Term central administrative services necessary for the Sale, including (without limitation) customary POS administration, sales audit, cash reconciliation, accounting, and payroll processing, as currently available through the Merchant's existing accounting and IT systems, all at no cost to Consultant.

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

**D. The Sale**

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

**E. Consultant Fee and Expenses in Connection with the Sale**

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

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

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

The Consultant Incentive Fee referenced above as earned in each case shall be in addition to the Base Fee and shall be calculated back to the first dollar received; provided, that Consultant agrees that the Consultant Incentive Fee shall not exceed \$1,500,000 in the aggregate. For purposes of calculating the Consultant Incentive Fee under this Agreement, "Net Recovery" shall mean gross receipts from sales of Merchandise during the Sale Term, net of applicable HST/GST, *minus* the Costs of the Sale identified in the

Expense Budget (defined below) attached as Exhibit C hereto and incorporated herein by reference. For the avoidance of doubt, Costs in the Expense Budget shall include the Base Fee payable by Merchant to Consultant.

Merchant shall be responsible for all expenses of the Sale, including (without limitation) all Store level operating expenses, all costs and expenses related to Merchant's other retail store operations, and all of Consultant's documented out of pocket expenses (the "Costs"). To control Costs, Merchant and Consultant have established an aggregate budget (the "Expense Budget") of certain delineated expenses, including (without limitation) payment of the costs of supervision (including (without limitation) Supervisors' wages, fees, travel, and deferred compensation), advertising and signage costs, and other miscellaneous expenses incurred by Consultant, including reasonable legal fees. The Expense Budget for the Sale is attached hereto as Exhibit C. The Expense Budget may only be modified with the consent of the Monitor and by mutual written (including email) agreement of Consultant and Merchant. The costs of supervision set forth on Exhibit C include, among other things, industry standard deferred compensation. Notwithstanding anything herein to the contrary, unless consented to by the Monitor and otherwise agreed to by Merchant in writing, Merchant shall not be obligated to pay costs of supervision and advertising costs that have not been included, or provided for, in the Expense Budget, as may be amended in accordance with the terms of this Agreement. Merchant shall reimburse Consultant for all Costs up to the aggregate budgeted amount set forth in the Expense Budget.

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

#### **F. Furniture, Fixtures and Equipment**

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

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

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

## **G. Payments & Accounting**

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

The Parties shall, in consultation with the Monitor, complete a final reconciliation and settlement of all amounts payable pursuant to this Agreement (including, without limitation, the determination of the Consultant Incentive Fee, Costs, FF&E Commission, FF&E Costs and all other fees, expenses, or other amounts reimbursable or payable hereunder) no later than forty five (45) days following (a) the Sale Termination Date for the last Store (the “Final Reconciliation”), or (b) the date upon which this Agreement is terminated in accordance with its terms. Within ten (10) days after the Final Reconciliation, (a) any amounts that are determined to be owing by Merchant to the Consultant shall be paid by the Merchant to the Consultant, and (b) any amounts that are determined to be owing by the Consultant to the Merchant as a result of any overpayments shall be paid by the Consultant to the Merchant.

## **H. Additional Consultant Goods**

Subject to the Approval Order, Consultant shall have the right to supplement the Merchandise in the Sale at the Stores with additional goods procured by Consultant which are of like kind, and no lesser quality to the Merchandise in the Sale at the Stores (“Additional Consultant Goods”); provided, however, that: (i) the Additional Consultant Goods sold as part of the Sale will not exceed \$10,000,000 at cost in the aggregate; (ii) the Additional Consultant Goods are of like kind and category and no lesser quality to the Merchandise, and consistent with any restriction on usage of the Stores set out in the applicable Leases; and (iii) the Additional Consultant Goods will be distributed amongst the Stores such that no Store receives Additional Consultant Goods at a cost in excess of \$750,000. The Additional Consultant Goods shall be purchased by Consultant as part of the Sale, and delivered to the Stores. Sales of Additional Consultant Goods shall be run through Merchant’s cash register systems; provided, however, that Merchant shall assist with marking, and Consultant shall mark the Additional Consultant Goods, using either a “dummy” SKU or department number, or in such other manner so as to distinguish the sale of Additional Consultant Goods from the sale of Merchandise. Consultant and Merchant shall also cooperate so as to ensure that the Additional Consultant Goods are marked in such a way that a reasonable consumer could identify the Additional Consultant Goods as non-Merchant goods. Additionally, Consultant shall provide signage in the Stores notifying customers that the Additional Consultant Goods have been included in the Sale.

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

Consultant and Merchant intend that the transactions relating to the Additional Consultant Goods are, and shall be construed as, a true consignment from Consultant to Merchant in all respects and not a consignment for security purposes. Subject solely to Consultant’s obligations to pay to Merchant the Additional Consultant Goods Fee, at all times and for all purposes the Additional Consultant Goods and their proceeds shall be the exclusive property of Consultant, and no other person or entity shall have any

claim against any of the Additional Consultant Goods or their proceeds. Merchant shall, at Consultant's sole cost and expense, insure the Additional Consultant Goods and, if required, promptly file any proofs of loss with regard to same with Merchant's insurers. Consultant shall be responsible for payment of any deductible under any such insurance in the event of any casualty affecting the Additional Consultant Goods.

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

## **I. Indemnification**

### **1) Merchant's Indemnification**

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

### **2) Consultant's Indemnification**

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

## **J. Insurance**

### **1) Merchant's Insurance Obligations**

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

2) Consultant's Insurance Obligations

Consultant shall maintain (at its sole cost and expense) throughout the Sale Term, liability insurance policies (including, without limitation, products liability/completed operations, contractual liability, comprehensive public liability and auto liability insurance) on an occurrence basis in an amount of at least two million dollars (\$2,000,000) and an aggregate basis of at least five million dollars (\$5,000,0000) covering injuries to persons and property in or in connection with Consultant's provision of services at the Stores. Consultant shall name Merchant as an additional insured and loss payee under such policy, and upon execution of this Agreement provide Merchant with a certificate or certificates evidencing the insurance coverage required hereunder. In addition, Consultant shall maintain throughout the Sale Term, workers' compensation insurance in compliance with all statutory requirements. Further, should Consultant employ or engage third parties to perform any of Consultant's undertakings with regard to this Agreement, Consultant will ensure that such third parties are covered by Consultant's insurance or maintain all of the same insurance as Consultant is required to maintain pursuant to this paragraph and name Merchant as an additional insured and loss payee under the policy for each such insurance.

**K. Representations, Warranties, Covenants and Agreements**

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

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

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

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

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

#### **L. Termination**

The following shall constitute “Termination Events” hereunder:

1) Merchant’s or Consultant’s failure to perform any of their respective material obligations hereunder, which failure shall continue uncured seven (7) days after receipt of written notice thereof to the defaulting Party (an “Event of Default”);

2) Any representation or warranty made by Merchant or Consultant is untrue in any material respect as of the date made or at any time and throughout the Sale Term; or

3) The Sale is terminated or materially interrupted or impaired for any reason, including but not limited to an order of the Court, other than as a result of an Event of Default by Consultant or Merchant.

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

#### **M. Notices**

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

**N. Independent Consultant**

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

**O. Non-Assignment**

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

**P. Severability**

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

**Q. Governing Law, Venue, Jurisdiction and Jury Waiver**

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

**R. Entire Agreement**

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

**S. Execution**

This Agreement may be executed simultaneously in counterparts (including by means of electronic mail, facsimile or portable document format (pdf) signature pages), any one of which need not contain the signatures of more than one party, but all such counterparts taken together shall constitute one and the same instrument. This Agreement, and any amendments hereto, to the extent signed and delivered by means of electronic mail, a facsimile machine or electronic transmission in portable document format (pdf), shall be treated in all manner and respects as an original thereof and shall be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person.

**T. Canadian Dollars**

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

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

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

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

**MERCHANT:**

**BED BATH & BEYOND CANADA L.P.,**

By its general partner BBB Canada Ltd.

By: \_\_\_\_\_

Name:

Its:

*[Signatures continued next page]*

**CONSULTANT:**

**HILCO MERCHANT RETAIL SOLUTIONS ULC  
For the “Consultant”**

By: \_\_\_\_\_

Name: Ian S. Fredericks

Its: Vice President

**Exhibit “1A”**

**List of Stores**

**[to be inserted]**

**Exhibit 1B**  
**List of Warehouse(s)**

**2975 Argentia Road**  
**Misissauga, ON**

**Exhibit “B”**

**Sale Guidelines**

## SALE GUIDELINES

The following procedures shall apply to ~~any the sale (the “Sale to be held”)~~ of merchandise, furniture, fixtures and equipment at Bed Bath & Beyond Canada L.P.’s (“**Merchant**”) retail stores (collectively, the “**Stores**”).

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

1. Except as otherwise expressly set out herein, and subject to: (i) the Order of the Court granted on February [ ], 2023 in the CCAA Proceedings (the “**Approval Order**”), approving the Consulting Agreement between a contractual joint venture comprised of Hilco Merchant Retail Solutions, ULC, Gordon Brothers Canada ULC, Tiger Asset Solutions, ULC, and B. Riley Retail Canada, ULC (collectively, “**Consultant**”) and Merchant, dated February ~~15~~20, 2023 (the “**Consulting Agreement**”) and the transactions contemplated thereunder, (ii) any further Order of the Court, or (iii) any subsequent written agreement between Merchant and its applicable landlord(s) (individually, a “**Landlord**” and, collectively, the “**Landlords**”) and approved by Consultant, the Sale shall be conducted in accordance with the terms of the applicable leases/or other occupancy agreements for each of the affected Stores (individually, a “**Lease**” and, collectively, the “**Leases**”). However, nothing contained herein shall be construed so as to create or impose upon Merchant or Consultant any additional restrictions not contained in the applicable Lease.
2. The Sale shall be conducted so that each of the Stores remain open during their normal hours of operation provided for in the respective Leases for the Stores until the applicable premises vacate date for each Store under the Consulting Agreement (the “**Vacate Date**”), and in all cases no later than ~~the April 30, 2023 (such date, or such other date as determined in accordance with the Approval Order, the “Sale Termination Date”)~~. Rent payable under the respective Leases shall be paid as provided in the Initial Order.
3. The Sale shall be conducted in accordance with applicable federal, provincial and municipal laws and regulations, unless otherwise set out herein or ordered by the Court.
4. All display and hanging signs used by Consultant in connection with the Sale shall be professionally produced and all hanging signs shall be hung in a professional manner. Notwithstanding anything to the contrary contained in the Leases, Consultant may advertise the Sale at the Stores as a “everything on sale”, “everything must go”, “store closing” or similar theme sale at the Stores (provided, however, that no signs shall advertise the Sale as a “bankruptcy”, a “liquidation” or a “going out of business” sale, it being understood that the French equivalent of “clearance” is “liquidation” and is permitted to be used). Forthwith upon request from a Landlord, the Landlord’s counsel, Merchant or the Monitor, Consultant shall provide the proposed signage packages along with proposed dimensions by email or facsimile to the applicable Landlords or to their counsel of record and the applicable Landlord shall notify Consultant of any requirement for such signage to otherwise comply with the terms of the Lease and/or the Sale Guidelines and where the provisions of the Lease conflicts with these Sale Guidelines, these Sale Guidelines shall govern. Consultant shall not use neon or day-glow signs or any handwritten signage (save that handwritten “you pay” or “topper” signs may be used). If a Landlord is concerned with “Store Closing” signs being placed in the front window of a Store or with the number or size of the signs in the front window, Merchant, Consultant and the Landlord will work together to resolve the dispute. Furthermore, with respect to enclosed mall Store locations without a separate entrance from the exterior of the enclosed mall, no exterior signs or signs in common areas of a mall shall be used unless explicitly permitted by the applicable Lease. In addition, Consultant shall be permitted to utilize exterior banners/signs at stand

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

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

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

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

16. ~~17.~~ Nothing herein or in the Consulting Agreement is, or shall be deemed to be a consent by any Landlord to the sale, assignment or transfer of any Lease, or shall, or shall be deemed to, or grant to the Landlord any greater rights than already exist under the terms of any applicable Lease.

17. ~~18.~~ These Sale Guidelines may be amended by written agreement between Consultant, Merchant and the applicable Landlord, in consultation with the Monitor; provided, however, that such amended Sale Guidelines shall not affect or bind any other Landlord not privy thereto without further Order of the Court approving such amended Sale Guidelines.

## Exhibit “C”

### Expense Budget

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

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

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

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

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

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

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, C. C- 36, AS AMENDED;** Court File No: CV-23-00694493-00CL

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

Applicants

**Ontario  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at: Toronto

**SUPPLEMENTAL AFFIDAVIT OF HOLLY ETLIN**

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