

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
MASTERMIND GP INC.

Applicant

**MOTION RECORD
(RETURNABLE JANUARY 12, 2024)**

January 5, 2024

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

B E T W E E N:

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 MASTERMIND GP INC.

Applicant

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TAB 1

**ONTARIO
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ACT, R.S.C. 1985, C.C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
MASTERMIND GP INC.

Applicant

**NOTICE OF MOTION
(RETURNABLE JANUARY 12, 2024)**

The Applicant, Mastermind GP Inc. ("**Mastermind GP**"), will make a motion before the Honourable Madam Justice Steele of the Ontario Superior Court of Justice (Commercial List) on Friday, January 12, 2024 at 10:00 a.m., or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard

- ☐ In writing under subrule 37.12.1(1) because it is
- ☐ In writing as an opposed motion under subrule 37.12.1(4);
- ☐ In person;
- ☐ By telephone conference;
- ☒ By video conference.

at the following location:

<https://ca01web.zoom.us/j/67927063702?pwd=c1Z2eFN3NXB1N0xOK0IYSWtCL2ZBZz09%27>

Meeting ID: 679 2706 3702

Passcode: 007287

THE MOTION IS FOR:

1. An Order (the “**Assignment Order**”) substantially in the form of the draft order located at Tab 3 of the Applicant’s Motion Record, which pursuant to section 11.3 of the CCAA, among other things, assigns, conveys and transfers to the Purchaser (as defined below) the rights and obligations of the Mastermind Entities (as defined below) under the Material Agreements (as defined below).
2. An ancillary order (the “**Ancillary Order**”) substantially in the form of the draft order located at Tab 4 of the Applicant’s Motion Record, which, among other things:
 - (a) authorizes and empowers the Monitor (as defined below) to, among other things, exercise any powers that may be properly exercised by any board of directors of the Mastermind Entities;
 - (b) declares that pursuant to sections 5(1)(b)(iv) and 5(5) of the *WEPP Act* (as defined below), Mastermind LP meets the criteria prescribed by section 3.2 of the *WEPP Regulations* (as defined below);
 - (c) extends the Stay Period, as ordered and defined in the ARIO (as defined below), from January 26, 2024 to April 30, 2024; and

- (d) revises the title of proceedings in these CCAA proceedings upon the official change to the legal names of the Mastermind Entities that is to occur in accordance with the Approval and Vesting Order (described below).

3. Such further and other relief as may be requested by the Applicant and as this Honourable Court considers just.

THE GROUNDS FOR THE MOTION ARE:

Background of the CCAA Proceeding and Transaction

4. The Applicant, Mastermind GP, is the general partner of Mastermind LP (collectively, the “**Mastermind Entities**”). Mastermind LP is a limited partnership and Canada’s largest specialty toy and children’s book retailer, operating under the “Mastermind Toys” banner.

5. Mastermind LP operates the Mastermind Toys business out of 66 retail stores in eight provinces that are leased by either Mastermind LP or Mastermind GP. Its head office and distribution centre are located in a leased premises in Toronto, Ontario.

6. The Mastermind Entities have experienced a severe liquidity crisis due to a confluence of factors, including declining sales revenues and increased competition and commoditization of the toy market.

7. Despite efforts to keep the business afloat, Mastermind LP’s revenues and profitability continued to decline amidst an increasingly challenging retail sector that has been negatively impacted by macro-economic trends and the COVID-19 pandemic.

8. Accordingly, on November 23, 2023 (the “**Filing Date**”), Mastermind GP sought and obtained an order (the “**Initial Order**”) for protection under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985 c. C-36, as amended (the “**CCAA**”) and appointing Alvarez & Marsal Canada Inc. as monitor (the “**Monitor**”). The protections granted in the Initial Order were extended to Mastermind LP.

9. On November 30, 2023, an Amended and Restated Initial Order (the “**ARIO**”) was granted by this Court. That same day, the Court also granted a Liquidation Sale Approval Order, pursuant to which Mastermind LP commenced a liquidation sale (the “**Liquidation Sale**”) at 18 of its stores on December 1, 2023.

10. On December 1, 2023, Mastermind LP, as seller, and Unity Acquisitions Inc. (the “**Purchaser**”), as purchaser, entered into an asset purchase agreement (the “**APA**”) pursuant to which the Purchaser will acquire certain assets of Mastermind LP (the “**Transaction**”).

11. On December 13, 2023, the Court granted an Approval and Vesting Order approving the APA and the Transaction. The Transaction is scheduled to close on January 15, 2024 (the “**Closing Date**”).

12. In accordance with the terms of the APA, the Purchaser intends to assign its rights and obligations under the APA to Mastermind Toys Inc., a wholly-owned subsidiary of Unity, on the day prior to closing of the Transaction.

13. Since entering into the APA, the Purchaser has identified 49 real estate leases (including Mastermind LP’s distribution centre) and other contracts as being material to

the operation of the Mastermind Toys business following the closing of the Transaction (the “**Material Leases**” and “**Material Contracts**”, respectively). The Purchaser has agreed to assume the Material Leases and Material Contracts.

Assignment of the Material Agreements is Appropriate

14. The Mastermind Entities are seeking an Assignment Order in order to assign the 49 Material Leases and 44 Material Contracts (collectively, the “**Material Agreements**”) to the Purchaser.

15. Several of the Material Agreements that the Purchaser will be assuming pursuant to the APA require consents from their respective counterparties (“**Third Party Consents**”) in order to assign them to the Purchaser. In addition, certain of the Material Agreements are silent with respect to whether or not they can be assigned.

16. Under the APA, Mastermind LP and the Purchaser must use commercially reasonable efforts to obtain all Third Party Consents required to assign the Material Agreements. If any Third Party Consents cannot be obtained, the APA requires Mastermind LP to obtain a court order under section 11.3 of the CCAA assigning the relevant leases and contracts to the Purchaser.

17. A key closing condition of the Transaction requires Mastermind LP to obtain, in respect of at least 85% of the Material Leases, all requisite Third Party Consents or a court order under section 11.3 of the CCAA.

18. The Mastermind Entities continue to work with the relevant counterparties of the Material Agreements to obtain any required Third Party Consents.

19. Out of an abundance of caution, the Mastermind Entities are seeking for all of the Material Agreements to be subject to the Assignment Order. The Mastermind Entities will use best efforts to serve the counterparties to the Material Agreements with the motion record relating to the January 12, 2024 motion (or notice of the motion by letter for those with only a mailing address).

20. Pursuant to the APA, the Purchaser has agreed to pay all monetary defaults in relation to the Material Agreements, other than those arising by reason of the Mastermind Entities' insolvency, the commencement of these CCAA proceedings or the Mastermind Entities' failure to perform a non-monetary obligation (the "**Cure Costs**").

21. The Purchaser has confirmed that it is ready, willing and able to perform the obligations under the Material Agreements, including the payment of any Cure Costs, and has the wherewithal to do so.

22. It is critical that the Assignment Order be approved. If this Court does not grant the Assignment Order, then the Transaction cannot close, and the Mastermind Entities' numerous stakeholders will be prejudiced given that, among other things: (i) the Mastermind Entities will not have any further options to continue the Mastermind Toys business as a going concern; and (ii) the critical window for maximizing recovery for creditors through a Liquidation Sale was the holiday shopping period, which ended on December 26, 2023.

23. The Monitor, the Purchaser and Mastermind LP's secured creditor, Canadian Imperial Bank of Commerce ("**CIBC**"), support the Mastermind Entities' request for an Assignment Order.

Enhanced Powers for the Monitor are Appropriate

24. Upon the resignation of the Mastermind Entities' directors and officers immediately following the close of the Transaction, the Mastermind Entities will no longer have directors or officers to make decisions in respect of the Mastermind Entities, including to wind down these CCAA proceedings.

25. Accordingly, the Mastermind Entities believe that it is not only appropriate but also necessary for the Court to grant the Ancillary Order, enhancing the Monitor's powers following the Closing Date by permitting it to act on behalf of the Mastermind Entities and exercise any powers that may be properly exercised by a board of directors of the Mastermind Entities, including, among other things, taking steps to facilitate the Mastermind Entities' obligations, including with respect to Mastermind LP's post-closing obligations and obligations to perform transition services under the APA, winding down the Mastermind Entities, facilitating a claims process and terminating these CCAA proceedings.

26. The Monitor and the Purchaser support the Ancillary Order granting the Monitor expanded powers and the Monitor is prepared to exercise such an expanded role. CIBC does not object to this request.

WEPP Act Relief is Appropriate in the Circumstances

27. The Mastermind Entities seek a declaration that Mastermind LP meets the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 (the "***WEPP Regulations***") such that its eligible former employees can receive certain benefits, including wages, termination and severance pay, that may be

owed to them under the *Wage Earner Protection Program Act (Canada)*, S.C. 2005, c. 47 (the “**WEPP Act**”) following the termination of their employment. The Monitor supports this request.

28. Mastermind LP is the sole employer for individuals who work in the “Mastermind Toys” business. As of the Filing Date, Mastermind LP employed approximately 800 employees. Effective as of January 14, 2024 all of Mastermind LP’s employees will be terminated (though many will be offered employment by the Purchaser).

29. Since the Filing Date, Mastermind LP has terminated 28 head office employees (20 who employees who were terminated effective as of December 7, 2023, one employee who was terminated effective as of December 14, 2023 and seven employees who have been or will be terminated effective as of January 12, 2024). 188 employees employed at the Liquidating Stores were also provided with notices of termination effective as of January 14, 2024. Approximately 40 temporary employees will be terminated effective as of January 14, 2024.

30. In addition, 619 employees of Mastermind LP will be terminated immediately prior to the Closing Date, all of whom will be offered employment by Mastermind Toys Inc., a wholly-owned subsidiary of the Purchaser. It is anticipated that the majority of the Mastermind LP’s former employees will continue to be employed by Mastermind Toys Inc..

31. All wages and vacation pay owed to terminated employees have been or will be paid. There are severance and termination payment amounts owing to employees that

have been terminated, such that it is appropriate in the circumstances to grant the relief sought by the Mastermind Entities.

Extension of the Stay Period is Appropriate

32. Pursuant to the ARIO, a stay of proceedings was granted until January 26, 2024. The Mastermind Entities are seeking an extension of the Stay Period to April 30, 2024 (the “**Stay Extension**”).

33. The Stay Extension is necessary to allow the Monitor, on behalf of the Mastermind Entities, to, among other things, perform all post-closing obligations under the APA, facilitate the termination of these CCAA proceedings and to wind-down the Mastermind Entities.

34. The Mastermind Entities have acted, and continue to act, in good faith and with due diligence in these CCAA proceedings and have given notice of these proceedings to their stakeholders, including landlords, secured creditors, employees, vendors and counterparties to the Material Agreements. The Monitor, the Purchaser and CIBC support the Stay Extension.

OTHER GROUNDS FOR THE MOTION:

35. The provisions of the CCAA, including sections 11, 11.02(2), 11.3 and 23, and the statutory, inherent and equitable jurisdiction of this Court;

36. Sections 5(1) and 5(5) of the *Wage Earner Protection Program Act*, S.C. 2005, c.47;

37. Section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222;

38. Rules 1.04, 1.05, 2.01, 2.03, 3.02, 16, 37 and 39 of the *Rules of Civil Procedures*, R.R.O 1990, Reg. 194, as amended;

39. Sections 97 and 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

40. Such further and other grounds as counsel may advise and this Honourable Court may permit;

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

41. The Affidavit #4 of Lucio Milanovich sworn January 5, 2024 and the Exhibits referred to therein;

42. The Third Report of the Monitor, to be filed; and

43. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

January 5, 2024

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TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
MASTERMIND GP INC.

Applicant

**AFFIDAVIT #4 OF LUCIO MILANOVICH
(SWORN JANUARY 5, 2024)**

I, Lucio Milanovich, of the City of Toronto, in the Province of Ontario, MAKE OATH
AND SAY:

1. The Applicant, Mastermind GP Inc. ("**Mastermind GP**"), is the general partner of Mastermind LP (together with Mastermind GP, the "**Mastermind Entities**"). Mastermind LP operates retail stores selling children's toys, games and books under the "Mastermind Toys" banner. I am the Interim Chief Financial Officer ("**CFO**") of Mastermind LP. In my capacity as CFO, which role I have held since October 2022, I oversee the financial activities of Mastermind LP and, as such, have knowledge of the matters contained in this Affidavit. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and, in all such cases, believe it to be true.

2. This Affidavit is sworn in support of Mastermind GP's motion for the following orders:

- (a) an order (the “**Assignment Order**”) pursuant to section 11.3 of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), *inter alia*, assigning, conveying and transferring to the Purchaser (as defined below) the rights and obligations of the Mastermind Entities under the Material Agreements (as defined below); and
- (b) an ancillary order (the “**Ancillary Order**”), *inter alia*:
 - (i) authorizing and empowering the Monitor (as defined below) to, among other things, exercise any powers that may be properly exercised by any board of directors of the Mastermind Entities;
 - (ii) declaring that pursuant to sections 5(1)(b)(iv) and 5(5) of the *WEPP Act* (as defined below), Mastermind LP meets the criteria prescribed by section 3.2 of the *WEPP Regulations* (as defined below); and
 - (iii) extending the Stay Period, as ordered and defined in the ARIO (as defined below), from January 26, 2024 to April 30, 2024.

3. In connection with these CCAA proceedings, I have previously sworn an affidavit dated November 22, 2023 (the “**Initial Affidavit**”), an affidavit dated November 29, 2023 (the “**Second Affidavit**”) and an affidavit dated December 6, 2023 (the “**Third Affidavit**”). I continue to rely on the details as set out in my Initial Affidavit, Second Affidavit and Third Affidavit (collectively, the “**Previous Affidavits**”). Where pertinent to the Mastermind Entities’ request for the Assignment Order and the Ancillary Order, I have repeated certain

facts as set out in my Previous Affidavits, each of which is attached (without exhibits) to this Affidavit as **Exhibits “A”, “B” and “C”**, respectively.

4. Capitalized terms that are not defined herein have the same meaning as ascribed to them in my Previous Affidavits.

A. Background and Overview

5. Mastermind LP is a limited partnership formed under the laws of Ontario and is the operating entity of the “Mastermind Toys” business, Canada’s largest, independent specialty toy and children’s book retailer. Mastermind GP is an Ontario corporation, and its sole purpose is to act as general partner of Mastermind LP.

6. Mastermind LP operates the Mastermind Toys business out of 66 retail stores in eight provinces across the country that are leased by either Mastermind LP or Mastermind GP. In addition, Mastermind LP operates its headquarters and distribution centre out of a leased premises at 415-419 Milner Avenue, Toronto, Ontario M1B 1Z9. As described in further detail below, 18 of the 66 retail stores will be closing prior to the closing of the Transaction (as defined below).

7. As described in detail in my Previous Affidavits, the Mastermind Entities are insolvent and, prior to the commencement of these CCAA proceedings, were experiencing a severe liquidity crisis due to, among other things, declining sales revenues and increased competition and commoditization of the toy market. Despite efforts to keep the business afloat, Mastermind LP continued to experience declining revenues and profitability amidst an increasingly challenging retail sector that has been negatively

impacted by macro-economic trends and the COVID-19 pandemic. As a result, the Mastermind Entities had no choice but to commence these CCAA proceedings.

8. On November 23, 2023 (the “**Filing Date**”), the Court made an order (the “**Initial Order**”) granting, among other things, the Mastermind Entities protection from their creditors under the CCAA and appointing Alvarez & Marsal Canada Inc. as monitor of the Mastermind Entities (the “**Monitor**”). The Court subsequently granted an amended and restated Initial Order (“**ARIO**”) on November 30, 2023. Copies of the Initial Order and ARIO are attached to this Affidavit as **Exhibits “D” and “E”**.

9. Pursuant to a Liquidation Sale Approval Order granted by the Court on November 30, 2023, Mastermind LP commenced a liquidation sale (the “**Liquidation Sale**”) at 18 of its stores (the “**Liquidating Stores**”) on December 1, 2023. A copy of the Liquidation Sale Approval Order is attached to this Affidavit as **Exhibit “F”**.

10. On December 1, 2023, Mastermind LP, as seller, and Unity Acquisitions Inc. (“**Unity**” or the “**Purchaser**”), as purchaser, entered into an asset purchase agreement (the “**APA**”), a redacted copy of which is attached to this Affidavit as **Exhibit “G”**.¹ Pursuant to the APA, the Purchaser will acquire certain assets of Mastermind LP (the “**Transaction**”). The Transaction will result in: (i) the continued operation of 48 of Mastermind LP’s retail stores and its head office/distribution centre; (ii) the preservation of jobs for the majority of Mastermind LP employees and relationships with Mastermind LP’s landlords; (iii) the continuation of the Mastermind Toys business; and (iv) the repayment in full of all obligations owing to Canadian Imperial Bank of Commerce

¹ On December 13, 2023, this Court granted a sealing Order over the APA.

(“**CIBC**”), Mastermind LP’s senior secured creditor. I understand that in accordance with the terms of the APA, the Purchaser intends to assign its rights and obligations under the APA to Mastermind Toys Inc., a wholly-owned subsidiary of Unity, on the day prior to closing of the Transaction.

11. On December 13, 2023, the Court granted an Approval and Vesting Order approving the APA and the Transaction, which is scheduled to close on January 15, 2024 (the “**Closing Date**”). A copy of the Approval and Vesting Order is attached to this Affidavit as **Exhibit “H”**.

12. On the same date, counsel for the Mastermind Entities advised the Court that a motion seeking an assignment order and other ancillary relief in order to effect the Transaction and complete the wind-down of these CCAA proceedings would be necessary. The Court set January 12, 2024 as the hearing date for such a motion, and this Affidavit is sworn in support of that motion.

B. Developments Since the Last Court Hearing

13. Since the last hearing, Mastermind LP has continued with the Liquidation Sale at the 18 Liquidating Stores. The Mastermind Entities expect the Liquidation Sale to be completed and all the Liquidating Stores to be closed by January 14, 2024. A chart of each Liquidating Store and its scheduled closing date is attached to this Affidavit as **Schedule “A”**.

14. As set out in the Initial Order and advised to the Court, Mastermind LP stopped selling gift cards as of the Filing Date but continued to honour gift cards until December 24, 2023.

15. Following the Filing Date, Canada Revenue Agency (the “**CRA**”) commenced two audits related to Mastermind LP. The first audit was a trust account review for payroll remittances for the period from January 1, 2022 through December 7, 2023 (the “**Payroll Audit**”). The Mastermind Entities have worked in conjunction with the Monitor to respond to the CRA’s requests in relation to this audit, which was completed on December 12, 2023. As a result of the Payroll Audit, the CRA identified an amount owing and issued a notice to Mastermind LP for the payment of approximately \$10,000. Mastermind LP has scheduled to pay this amount, and the CRA has confirmed that there are no remaining issues outstanding in connection with the Payroll Audit.

16. The second audit was a limited scope HST review (the “**HST Audit**”) by the CRA, which the Monitor advises me is customary in CCAA proceedings. I understand that the purpose of the HST Audit was to determine the quantum of input tax credits that Mastermind LP had claimed prior to the Filing Date. The HST Audit was limited to Mastermind LP’s creditors as at the Filing Date. The Mastermind Entities, in conjunction with the Monitor, have been in frequent communication with the CRA with respect to this audit, which remains ongoing.

17. Since entering into the APA, the Purchaser has identified 49 real estate leases (including Mastermind LP’s distribution centre) and other contracts as being material to the operation of the Mastermind Toys business post-closing (the “**Material Leases**” and “**Material Contracts**”, respectively), and the Purchaser has agreed to assume them. To the best of my knowledge, as of the date of this Affidavit I understand that all rent is current under the Material Leases and that there are no current monetary defaults thereunder.

18. There are, however, other leases and agreements (other than the Material Leases and Material Contracts) that the Purchaser will not be assuming under the APA, including the leases for the 18 Liquidating Stores. With respect to these 18 leased locations, between December 13 and 14, 2023 notices of disclaimer were delivered to the landlords and/or property managers. With respect to other contracts that the Purchaser will not be assuming, Mastermind LP intends to disclaim or terminate those contracts that will not be required by the Mastermind Entities from and after the Closing Date.

19. Further developments relating to the relief that the Mastermind Entities are seeking on the within motion, such as the Mastermind Entities' efforts to assign certain of the Material Leases and Material Contracts to the Purchaser and with respect to the termination of Mastermind LP's employees, are set out below.

C. The Assignment Order

(i) The Parties' Efforts to Assign the Material Agreements

20. I understand that the Mastermind Entities are seeking the Assignment Order in order to assign 49 Material Leases and 44 Material Contracts (collectively, the "**Material Agreements**") to the Purchaser. I further understand that a complete list of the Material Agreements to be assigned will be included as Schedule "A" to the draft Assignment Order.²

21. Several of the Material Agreements that the Purchaser will be assuming pursuant to the APA require consents from their respective counterparties ("**Third Party**

² I am advised that the draft form of Assignment Order will be included at Tab 3 of the Mastermind Entities' motion record.

Consents") in order to assign them to the Purchaser. I am advised by Davies Ward Phillips & Vineberg LLP ("**Davies**"), counsel to the Mastermind Entities, that some of the Material Leases expressly require the landlords' consent to an assignment, and other Material Leases require the landlords' consent to an assignment based on certain thresholds. In addition, some of the Material Contracts being assigned to the Purchaser expressly require the counterparties' consent.

22. Under the APA, Mastermind LP and the Purchaser must use commercially reasonable efforts to obtain all Third Party Consents required to assign the Material Agreements. If any Third Party Consents cannot be obtained, the APA requires Mastermind LP to obtain a court order under section 11.3 of the CCAA assigning the relevant leases and contracts to the Purchaser.³ A key closing condition of the Transaction requires Mastermind LP to obtain, in respect of at least 85% of the Material Leases, all requisite Third Party Consents or a court order under section 11.3 of the CCAA.

23. Mastermind LP and the Purchaser have been working diligently and in good faith to locate and review the Material Agreements and related documents and to obtain the requisite Third Party Consents and will continue to work with the relevant counterparties to obtain such consents required. In addition, certain of the Material Agreements are silent with respect to whether or not they can be assigned. Out of an abundance of caution, the Mastermind Entities are seeking for all of the Material Agreements to be subject to the

³ This requirement is set out section 2.4 of the APA.

Assignment Order (even those for which Third Party Consents have been obtained or are not explicitly required, or where the need for such consent remains unclear).

24. The Mastermind Entities intend to use best efforts to serve the counterparties to each of the Material Agreements to the last known address or contact with the motion record relating to the January 12, 2024 motion, and for those with only a mailing address, sending a letter directing them to the Monitor's website where a copy of the motion record will be available.⁴ The motion record will include a draft form of Assignment Order, and Schedule "A" thereto which sets out, among other things, a list of the Material Agreements to be assigned to the Purchaser.⁵ I am advised by Davies that an updated Schedule "A" will be provided to the Service List, affected counterparties and the Court prior to the January 12, 2024 motion date if any changes to the list of Material Agreements have occurred.

(ii) Cure Costs

25. Pursuant to the APA and as required by the CCAA,⁶ the Purchaser has agreed to pay all monetary defaults in relation to the Material Agreements, other than those arising by reason of the Mastermind Entities' insolvency, the commencement of these CCAA proceedings or the Mastermind Entities' failure to perform a non-monetary obligation (the "**Cure Costs**").⁷ The draft form of Assignment Order provides that the Purchaser will pay

⁴ Attached as Exhibit "I" to this Affidavit is a copy of the Distribution List setting out the recipients.

⁵ I am advised that the draft form of Assignment Order will be included at Tab 3 of the Mastermind Entities' motion record.

⁶ I am advised by Davies and verily believe that this is a requirement under the CCAA.

⁷ The APA defines "**Cure Costs**" as "in respect of any Assumed Contract, Assumed Real Property Lease, Purchased IP or Assumed Authorization, all amounts (if any) that must be paid by Buyer pursuant to section 11.3(4) of the CCAA."

the Cure Costs of the Material Agreements within seven (7) business days after closing of the Transaction.⁸

26. As of the date of this Affidavit, and based on the books and records of Mastermind LP, the total amount of Cure Costs is anticipated to be \$364,051. These amounts have been set out on a per contract basis in Schedule "A" to the draft Assignment Order.⁹

(iii) The Assignment of the Material Agreements is Appropriate

27. The Mastermind Entities believe that the Assignment Order is appropriate in the circumstances. Without the Assignment Order, which is a key condition of the APA, the Transaction cannot close. It is critical that the Transaction closes in order to preserve over 500 jobs, maintain relationships with landlords, continue 49 leases and limit business disruption. If the Transaction does not close, then the Mastermind Entities will not have any further options to continue the Mastermind Toys business as a going concern. Moreover, while the Mastermind Entities could proceed with a Liquidation Sale at all stores if the Transaction does not close, the critical window for maximizing recovery for creditors was the holiday shopping period, which ended on December 26, 2023.

28. I am advised by the Purchaser that it is ready, willing and able to perform the obligations under the Material Agreements, including the payment of any Cure Costs, and has the wherewithal to do so. I further understand that a letter from Fasken Martineau DuMoulin LLP, counsel to the Purchaser, confirming same and including certain

⁸ I am advised that the draft form of Assignment Order will be included at Tab 3 of the Mastermind Entities' motion record.

⁹ I am advised that the draft form of Assignment Order will be included at Tab 3 of the Mastermind Entities' motion record.

information regarding the capitalization of the Purchaser, will be attached to a report to be filed by the Monitor in connection with this motion.

29. I am advised by the Monitor and verily believe that it supports the Mastermind Entities' request for an Assignment Order. I also understand that both the Purchaser and Mastermind LP's secured creditor, CIBC, support the Mastermind Entities' motion seeking an Assignment Order.

D. The Ancillary Order

30. In addition to the Assignment Order, the Mastermind Entities are seeking the Ancillary Order to, among other things:¹⁰ (i) expand the Monitor's powers; (ii) enable Mastermind LP's former employees to access benefits under the *WEPP Act*; and (iii) extend the Stay Period to April 30, 2024.

(i) Enhanced Powers for the Monitor are Appropriate

31. The Mastermind Entities' directors and officers, including me, have confirmed that they will resign from their positions, effective immediately following the Closing Date for the Transaction, which, as described above, is scheduled to occur on or about January 15, 2024. As a result, the Mastermind Entities will have no directors or officers to make decisions in respect of the Mastermind Entities, including to wind down these CCAA proceedings.

¹⁰ I am advised by Davies that the Ancillary Order is being sought in order to approve distributions to CIBC, and am advised that such distributions to CIBC will be described in a report of the Monitor, to be filed with the Court.

32. Consequently, the Mastermind Entities believe that it is not only appropriate but also necessary for the Court to grant the Ancillary Order, enhancing the Monitor's powers following the Closing Date¹¹ by authorizing and empowering it to, *inter alia*:

- (a) exercise any powers that may be properly exercised by a board of directors of the Mastermind Entities;
- (b) execute administrative filings as may be required on behalf of the Mastermind Entities;
- (c) take any and all actions and steps required, and execute all agreements, documents, instruments and writings, on behalf of, and in the name of, the Mastermind Entities, in order to facilitate: (i) the performance of the Mastermind Entities' obligations, including but not limited to those arising following closing of the Transaction that relate to the APA, the Transaction or any Court order in these CCAA proceedings (such as the Mastermind Entities' post-closing obligations under the APA and obligations to perform transition services under the APA); (ii) the carrying out of the Monitor's duties under the Ancillary Order or any other order of the Court in these CCAA proceedings; (iii) the winding down or liquidation of the Mastermind Entities; (iv) a process for soliciting, determining and resolving any claims

¹¹ The draft form of Ancillary Order contemplates that the Monitor's enhanced powers will become effective once the Monitor has delivered its Monitor's Certificate certifying that it has received written confirmation from Mastermind LP and the Purchaser that all conditions to closing the Transaction under the APA have been satisfied or waived, and that the Transaction has been completed.

against the Mastermind Entities and their present and former directors and officers; or (v) the termination of these CCAA proceedings;

- (d) claim or cause the Mastermind Entities to claim any and all insurance proceeds or refunds or tax refunds to which either of the Mastermind Entities is entitled that were not transferred pursuant to the Approval and Vesting Order;
- (e) conduct, supervise and direct the continuation or commencement of any process or effort to collect or recover any Property (as defined in the ARIO) or other assets of the Mastermind Entities (including any accounts receivable or cash) and to sell or dispose of such Property or other assets in accordance with the orders of the Court in these CCAA proceedings;
- (f) act as an authorized representative of the Mastermind Entities in respect of dealings with any taxing or regulatory authority;
- (g) apply to the Court for advice and directions or any further orders necessary or advisable to carry out the Monitor's powers and duties under the Ancillary Order or any other order of the Court granted in these CCAA proceedings;
- (h) engage, retain or terminate or cause the Mastermind Entities to engage, retain or terminate the services of any officer, employee, consultant, agent, representative or advisor as necessary to assist with the exercise of the Monitor's powers and duties; and

- (i) access all books and records of the Mastermind Entities for purposes that include preparing and filing taxes.

33. I am advised by the Monitor and verily believe that it supports the Ancillary Order enhancing its powers and is prepared to exercise such an expanded role in accordance with the terms of the Ancillary Order.

34. I further understand that the Purchaser is supportive of the Monitor being granted such expanded powers. I also understand that CIBC does not object to this request.

(ii) ***WEPP Act Relief is Appropriate in the Circumstances***

35. I am advised by Davies and believe that the *Wage Earner Protection Program Act (Canada)*, S.C. 2005, c. 47 (the “***WEPP Act*”**) allows eligible former employees to collect certain benefits, including wages, termination and severance pay, that may be owed to those former employees where the former employer is involved in CCAA proceedings and provided that certain criteria under section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 (the “***WEPP Regulations*”**) are met. I am also advised that section 3.2 of the *WEPP Regulations* requires the Court to make certain determinations in respect of Mastermind LP in order for the *WEPP Act* to apply in a CCAA proceeding, including to determine whether all of Mastermind LP’s employees in Canada have been terminated, other than any retained to wind down its business operations.

36. Mastermind LP is the sole employer for individuals who work in the “Mastermind Toys” business. As of the Filing Date, Mastermind LP employed approximately 800 employees, consisting of 625 part-time employees and 175 full-time employees. In addition, Mastermind LP hired approximately 160 temporary employees to assist with the

holiday shopping season (the “**Temporary Employees**”). The employment for the majority of these Temporary Employees expired in accordance with the terms of their employment agreements.

37. Effective as of January 14, 2024, all of Mastermind LP’s employees will be terminated (though many will be offered employment by the Purchaser). There are four categories of employee terminations (collectively, the “**Terminated Employees**”):

- (a) 28 head office employees who were terminated following the Filing Date as follows: (i) 20 employees who were terminated effective as of December 7, 2023; (ii) one employee who was terminated effective as of December 14, 2023; and (iii) seven employees who have been or will be terminated effective as of January 12, 2024;
- (b) 188 employees who are employed at the Liquidating Stores, which will be closed by January 14, 2024. All of these employees have been provided with notices of termination that are effective as of January 14, 2024;
- (c) approximately 40 Temporary Employees who were retained beyond the expiration of their employment agreements due to the varying turnover levels of staff in certain stores, including unanticipated early departures by regular employees. These Temporary Employees were provided with individual termination notices with an effective date of January 14, 2024; and

(d) 16 employees who will not be offered employment with the Purchaser.

These employees have been or will be terminated as follows: (i) 13 employees who were terminated effective as of January 2, 2024; (ii) two employees who will be terminated effective as of January 11, 2024; and (iii) one employee who will be terminated effective as of January 14, 2024.

38. In addition, 619 employees of Mastermind LP will be terminated immediately prior to the Closing Date, all of whom will be offered employment by the Purchaser (the “**Continuing Employees**”). I understand that as of the date of this Affidavit, the Purchaser’s wholly-owned subsidiary, Mastermind Toys Inc.,¹² will deliver 619 offers of employment to the Continuing Employees. The Continuing Employees who accept the offer of employment will become employees of Mastermind Toys Inc. as of the Closing Date on January 15, 2024. It is anticipated that the majority of Mastermind LP’s former employees will continue to be employed by the Purchaser.

39. It is my understanding that all wages and vacation pay owed to the Terminated Employees have been or will be paid. It is my further understanding that there are severance and termination payment amounts owing to the Terminated Employees. The Mastermind Entities therefore believe that their request for a declaration under the *WEPP Act* is appropriate in the circumstances because it will assist Mastermind LP’s former employees in accessing the *WEPP Act* benefits described above for severance and termination amounts. I am advised by the Monitor and believe that it supports this request.

¹² Mastermind Toys Inc. is a wholly-owned subsidiary of Unity. As described above, the Purchaser intends to assign its rights and obligations under the APA to its wholly-owned subsidiary.

(iii) The Stay Extension is Appropriate in the Circumstances

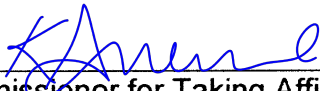
40. Pursuant to the ARIO, this Court ordered a stay of proceedings until January 26, 2024. At the time, the Mastermind Entities advised the Court that a further stay may be necessary depending on whether a transaction, which had not been agreed to at the time, could be negotiated and when the closing of such a transaction would take place.

41. Although the Transaction is scheduled to close on January 15, 2024, the APA contemplates an outside date of January 30, 2024 for completion of the Transaction. I am advised by the Monitor and the Purchaser that a number of steps need to take place post-closing to transition the business to the Purchaser. I am further advised by Davies that these post-closing steps are contemplated by the APA and that additional steps are likely to be required to facilitate the orderly termination of these CCAA proceedings and the wind down of the Mastermind Entities thereafter.

42. The Mastermind Entities are therefore seeking an extension of the Stay Period to April 30, 2024 (the “**Stay Extension**”) in order to provide the Mastermind Entities with the runway necessary to complete the Transaction, all post-closing steps and the steps required to facilitate the termination of these CCAA proceedings and the wind down of the Mastermind Entities.

43. The Mastermind Entities have acted, and continue to act, in good faith and with due diligence in these CCAA proceedings and have given notice of these proceedings to their stakeholders, including landlords and counterparties to the Material Agreements and Mastermind LP’s secured creditor, CIBC. I understand that the Monitor, the Purchaser and CIBC are in favour of the Stay Extension.

SWORN remotely by Lucio Milanovich at
the City of Toronto, in the Province of
Ontario, before me on the 5th day of
January, 2024 in accordance with
O. Reg. 431/20, Administering Oath or
Declaration Remotely.



Commissioner for Taking Affidavits

KRISTINE SPENCE



LUCIO MILANOVICH

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 MASTERMIND GP INC.

Applicant

Court File No. CV-23-00710259-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**AFFIDAVIT #4 OF LUCIO MILANOVICH
(SWORN JANUARY 5, 2024)**

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Lawyers for the Applicant, Mastermind GP Inc.

Schedule “A” – Liquidating Stores and Closure Dates

Store #	Store Name	Exit Date	Notice of Disclaimer Issued
252	Vaughan, ON	January 13, 2024	December 13, 2023
261	Hurontario, ON	January 13, 2024	December 13, 2023
265	Barrie, ON	January 9, 2024	December 13, 2023
277	Kingston, ON	January 9, 2024	December 13, 2023
290	Windermere Currents, AB	January 6, 2024	December 13, 2023
292	Red Deer, AB	January 6, 2024	December 14, 2023
297	Cambridge, ON	January 13, 2024	December 13, 2023
316	Lethbridge, AB	January 12, 2024	December 13, 2023
321	Kildonan, MB	January 12, 2024	December 13, 2023
324	Saint John, NB	January 12, 2024	December 13, 2023
325	Fredericton, NB	January 9, 2024	December 13, 2023
326	Medicine Hat, AB	January 12, 2024	December 13, 2023
327	Sudbury, ON	December 30, 2023	December 13, 2023
331	Hamilton, ON	January 6, 2024	December 13, 2023
332	Sydney, NS	January 6, 2024	December 13, 2023
335	Prince George, BC	January 9, 2024	December 13, 2023
338	Owen Sound, ON	January 6, 2024	December 13, 2023
342	Ajax, ON	January 9, 2024	December 13, 2023

TAB A

This is **Exhibit "A"** referred to in the Affidavit of LUCIO MILANOVICH of the City of Toronto, in the Province of Ontario, before me at the City of Toronto in the Province of Ontario, on the 5th day of January, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for taking affidavits
Kristine Spence (LSO #66099S)

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
MASTERMIND GP INC.**

**AFFIDAVIT OF LUCIO MILANOVICH
SWORN NOVEMBER 22, 2023**

I, **Lucio Milanovich**, of the City of Toronto, in the Province of Ontario, MAKE
OATH AND SAY:

1. The Applicant is Mastermind GP Inc. ("**Mastermind GP**" or the "**Applicant**"). The sole purpose of Mastermind GP is to act as the general partner of Mastermind LP (together with Mastermind GP, the "**Mastermind Entities**"), which operates retail stores under the "Mastermind Toys" banner. I am the Interim Chief Financial Officer ("**CFO**") of Mastermind LP. I began this position in October 2022. In my capacity as CFO, I oversee the financial activities of Mastermind LP, and my responsibilities include leading the corporate accounting, financial planning and cash management of the business. Although I am CFO at Mastermind LP, I am also an employee of Birch Hill Equity Partners Management Inc. ("**BHEPMI**"), which is the majority shareholder of Mastermind LP. I do not draw a salary from Mastermind LP or Mastermind GP. By virtue of my position as CFO, I have knowledge of the matters deposed to herein. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and, in all such cases, believe it to be true.

2. This Affidavit is made in support of the Application by Mastermind GP for relief under the *Companies' Creditor Arrangement Act*, R.S.C. 1985, c. C-36 as amended (the "**CCAA**").

3. As part of its Application, the Applicant is seeking an initial order (the "**Initial Order**"), *inter alia*:

- (a) declaring that Mastermind GP is a party to which the CCAA applies and that Mastermind LP shall be bound by the Initial Order and enjoy the protections, authorizations and benefits thereof;
- (b) granting a stay of proceedings against the Mastermind Entities for a period of not more than eight (8) days, subject to further order of the Court;
- (c) appointing Alvarez & Marsal Canada Inc. ("**A&M**" or the "**Proposed Monitor**") as the Court-appointed monitor of the Applicant;
- (d) permitting the Mastermind Entities' continued use of the Cash Management System (as defined below);
- (e) granting charges against the property of the Mastermind Entities, in the following priority:
 - (i) an administration charge in the amount of \$750,000 to secure the fees and disbursements of the Proposed Monitor, counsel to the Proposed Monitor and counsel to the Mastermind Entities (the "**Administration Charge**"); and
 - (ii) an indemnity and priority charge in the amount of \$4 million to indemnify the directors and officers for any obligations and liabilities they may incur in such capacities (the "**D&O Charge**");

- (f) setting a hearing date within eight (8) days of the Initial Order, and in any event, by no later than November 30, 2023 (the “**Comeback Hearing**”) for the Mastermind Entities to return to Court to seek approval of an Amended and Restated Initial Order (the “**ARIO**”).

4. At the Comeback Hearing, and subject to change, the Mastermind Entities intend to seek an ARIO, *inter alia*:

- (a) extending the stay of proceedings against the Mastermind Entities until January 28, 2024;
- (b) approving a forbearance agreement between the Mastermind Entities and the Canadian Imperial Bank of Commerce (“**CIBC**”) and granting a lender’s charge in favour of CIBC (the “**Lender’s Charge**”);
- (c) approving the consulting agreement to be entered into by Gordon Brothers Canada ULC (the “**Agent**”) and the Mastermind Entities (the “**Consulting Agreement**”) for the liquidation of inventory, furniture, fixtures and equipment located in certain of the Mastermind Entities’ store locations and authorizing and directing the Mastermind Entities to enter into and complete the transactions contemplated by the Consulting Agreement;
- (d) approving the sale guidelines appended to the Consulting Agreement (the “**Sale Guidelines**”);
- (e) approving a key employee retention plan (“**KERP**”) in respect of certain of Mastermind LP’s employees;
- (f) granting a KERP charge against the property of the Mastermind Entities as security for the amounts that may become payable under the KERP;

- (g) granting other relief related to the *Wage Earner Protection Program Act* (“**WEPPA**”);
- (h) extending and increasing the amount of Administration Charge and D&O Charge granted under the Initial Order, to the extent necessary; and
- (i) granting such other relief as may be required.

OVERVIEW

5. Mastermind LP is a beloved Canadian retail company, operating the country’s largest, independent specialty toy and children’s book retailer with 66 locations across the country under the “Mastermind Toys” banner. Mastermind LP is the operating entity, and Mastermind GP is its general partner. The principal purpose of this CCAA proceeding is to facilitate an orderly liquidation and wind-down of the “Mastermind Toys” business and pursue the possibility of a going concern sale transaction.

6. Over the past several years, Mastermind LP has incurred substantial operating losses as a result of declining sales and gross margins, increased competition, commoditization of the toy category and other macro-economic trends generally affecting many Canadian retailers, all of which were exacerbated by the impacts resulting from the COVID-19 pandemic. Most recently, the post-pandemic retail landscape has been further impacted by deteriorating consumer sentiment as consumers face a poor economic outlook, high inflation, increased costs of borrowing and geo-political instability. Despite implementing a series of cost reduction and other initiatives to improve profitability (as described in detail below), Mastermind LP’s revenues and profitability have continued to decline, resulting in a significant liquidity and working capital shortfall in the business.

7. In March 2023, Mastermind LP retained Alvarez & Marsal Canada ULC and Alvarez & Marsal Canada Securities ULC (together, “**A&M Corporate Finance**”) to review and advise on strategic alternatives and ultimately conduct a comprehensive out-of-Court sale process. As described further below, the sale process initially resulted in interest from a number of potential going concern purchasers, which submitted non-binding letters of interest (“**LOIs**”). However, as Mastermind LP’s financial position worsened, each of these going concern bidders, with the exception of one party (the “**Strategic Bidder**”), withdrew from the sale process. Working with the Strategic Bidder, A&M Corporate Finance, Mastermind LP and BHEPMI structured a transaction that would have seen Mastermind LP’s business continue as a going concern and avoid the need to seek protection under the CCAA. Mastermind LP and the Strategic Bidder executed an equity purchase agreement on September 22, 2023 (the “**Equity Purchase Agreement**”) with certain equity holders of Mastermind LP and the shareholders of Mastermind GP (the “**Going Concern Transaction**”). The Equity Purchase Agreement specifically included a deadline of November 24, 2023, by which the Going Concern Transaction had to be consummated (the “**Outside Date**”) so that Mastermind LP would receive the capital and liquidity that it critically needed to fund its obligations through the Holiday Period (as defined below) and stave off insolvency.

8. The Going Concern Transaction was subject to mandatory pre-merger notification under the *Competition Act* because it satisfied applicable notification thresholds.¹ Given Mastermind LP’s relatively insignificant market share and the vigorous retail and

¹ I have been advised by A&M Corporate Finance on the facts deposed to in this Affidavit concerning the mandatory pre-merger notification process, including the Mastermind Entities’ interactions with the Competition Bureau, and in all cases I believe these facts to be true.

wholesale competition in the Canadian toy category, the parties were optimistic that the transaction would satisfy all *Competition Act* requirements in advance of the Outside Date. As part of its submissions that the transaction would not result in a substantial prevention or lessening of competition, Mastermind LP engaged in numerous discussions with and submitted a comprehensive set of materials to the Competition Bureau demonstrating Mastermind LP's financial position had deteriorated beyond repair and underscoring the urgency of completing the transaction by the Outside Date. Mastermind LP explained to the Competition Bureau that, absent the Going Concern Transaction, it would have no choice but to enter insolvency proceedings. This would result in the liquidation of a substantial number of stores, the loss of hundreds of jobs and hundreds of unpaid creditors such as merchants, landlords and other suppliers.

9. On November 8, 2023, the Commissioner of Competition (the "**Commissioner**") issued a number of Supplemental Information Requests ("**SIRs**") to the Mastermind Entities and the Strategic Bidder. Responses to the SIRs and compliance with the subsequent statutory waiting period would have taken several months and imposed prohibitive costs on the parties. It was also not certain that the Commissioner would grant clearance to the transaction following compliance with the SIRs. In light of the SIRs and the significant commercial risks and uncertainties they presented to the Going Concern Transaction, and with the Mastermind Entities facing increasing liquidity pressure, the parties terminated the contemplated transaction as of November 8, 2023.

10. Since November 8, 2023, A&M Corporate Finance has worked tirelessly to find a new buyer for some or all of the business, including through a CCAA proceeding, if necessary. A&M Corporate Finance continues advanced discussions with one such

potential purchaser in connection with a potential going concern transaction for a portion of the business (the “**Potential CCAA Transaction**”). The Potential CCAA Transaction would see the purchaser acquire certain assets of the Mastermind Entities, including a large number of Mastermind LP’s stores, and continue to operate the business at a reduced scale after exiting certain markets and after implementing certain restructuring initiatives in these CCAA proceedings.

11. Due to their lack of liquidity, the Mastermind Entities took the prudent step to commence these CCAA proceedings. This step will ensure that the Mastermind Entities retain flexibility to explore the Potential CCAA Transaction, while benefiting from the stay of proceedings and other relief required due to the Mastermind Entities’ inability to service their outstanding debt, address their current default under their senior secured credit facility and pay their vendors in the ordinary course of business.

12. The urgency of this Application is of particular importance given the upcoming holiday shopping season, which begins in the days leading up to Black Friday (November 24) through Boxing Day (December 26) (the “**Holiday Period**”). The volume of sales that Mastermind LP typically generates during the Holiday Period (approximately one month) accounts for over one-quarter of its annual sales. The Mastermind Entities’ ability to take advantage of these holiday sales volumes through the proposed liquidation is their only chance to maximize recovery for their creditors. Mastermind LP no longer has sufficient cash to pay its vendors and cannot continue to operate throughout the Holiday Period unless the Mastermind Entities receive relief under the CCAA.

13. The Mastermind Entities therefore seek Court-ordered protection under the CCAA to provide Mastermind LP with a stable operational environment to enable it to complete

a Court-approved liquidation led by the Agent and pursue other strategic options, including the Potential CCAA Transaction or, failing that, a potential sale of its intellectual property, leases and other assets.

14. The remainder of this Affidavit is presented in two parts, being the Mastermind Entities' financial circumstances and the relief sought, as set out below:

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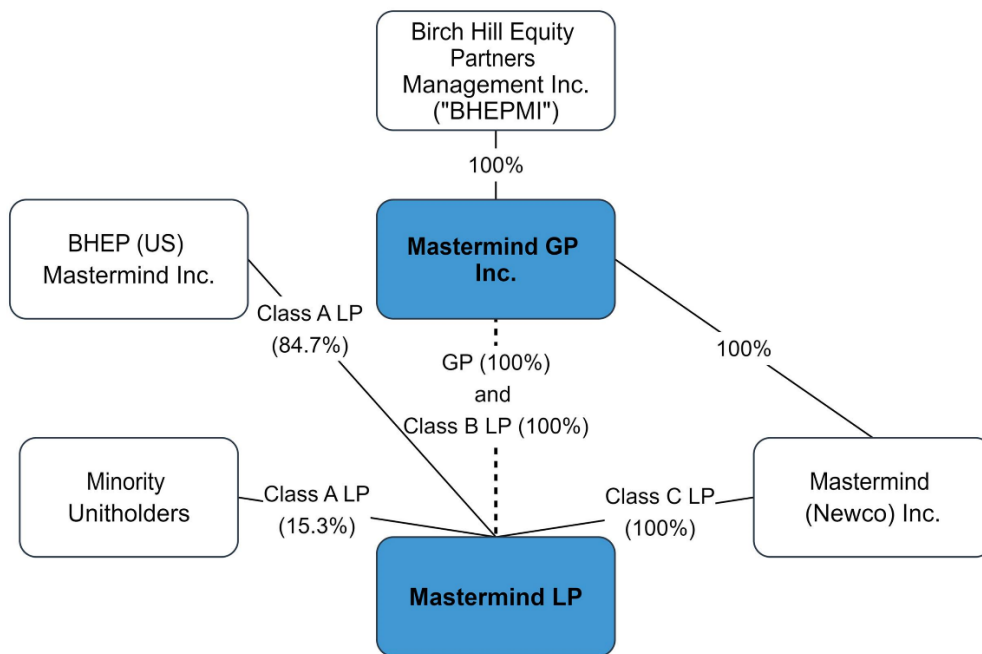
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PART I – THE MASTERMIND ENTITIES’ FINANCIAL CIRCUMSTANCES

A. CORPORATE STRUCTURE

15. As noted above, the Mastermind Entities are comprised of Mastermind LP and Mastermind GP, each of which is formed under the laws of Ontario with registered head offices in Ontario.² The ultimate parent of the Mastermind Entities is BHEPMI. A simplified chart of the Mastermind Entities’ corporate structure is as follows:



Mastermind LP

16. The “Mastermind Toys” business is operated by Mastermind LP, a limited partnership formed under the laws of Ontario. The Class A limited partnership units in Mastermind LP are held by the following limited partners: (a) BHEP (US) Mastermind Inc., a holding company incorporated under the laws of Ontario; and (b) minority unitholders,

² Mastermind GP and Mastermind LP have their registered head offices at 81 Bay Street, Toronto, Ontario.

including various corporations³ owned by Mastermind LP employees (the “**EmployeeCos**”) and a former board member of Mastermind GP. In order to finance, in whole or in part, their subscription price for Class A limited partnership units in Mastermind LP, each of the EmployeeCos issued redeemable, preferred shares to Mastermind LP. A copy of the profile report for Mastermind LP is attached to this Affidavit as **Exhibit “A”**.

Mastermind GP Inc.

17. Mastermind GP is an Ontario corporation and the general partner of Mastermind LP. Mastermind GP holds the sole general partnership unit and all Class B limited partnership units of Mastermind LP. Mastermind GP does not have any operations and exists for the sole purpose of acting as general partner of Mastermind LP. Mastermind GP is a wholly-owned subsidiary of BHEPMI. A copy of the corporate profile report for Mastermind GP is attached to this Affidavit as **Exhibit “B”**.

B. THE MASTERMIND ENTITIES’ BUSINESS

18. The Canadian toy retail market is a multi-billion dollar industry, having generated sales of approximately \$2.39 billion in 2022.⁴ The Canadian toy industry is extremely competitive, not only because of speciality retailers such as Toys R Us and Indigo but also due to the increasing market penetration of multiline retailer conglomerates such as Walmart, Amazon, Costco and Canadian Tire. Mastermind LP currently holds approximately 3% of the Canadian market and is forced to compete with a large number of conglomerates who have the benefit of scale and certain omni-channel capabilities, which makes

³ The EmployeeCos are 2458684 Ontario Inc., RDJCO Inc., Myhan Inc., 1814729 Ontario Inc., 2596788 Ontario Inc. and 2596648 Ontario Inc.

⁴ Erick Bauer “[The NPD Group: Canada Toy Industry Retail Sales Continue to Grow in 2022](#)” The NPD Group (26 Jan 2023).

maintaining this market share an increasingly insurmountable challenge. Multiline retailers have a particular competitive advantage during the Holiday Period, when they offer discounts on toy products to drive traffic to stores, all while recouping revenues through sales in other categories. As a retailer focusing exclusively on the toy category, Mastermind LP cannot adopt the same strategy.

19. Mastermind LP has historically differentiated itself in the market by employing dedicated, passionate and knowledgeable staff, called “Play Experts”. These Play Experts promote the power of play to children’s development and are instrumental in upholding the brand and in engaging Mastermind LP’s loyal customer base. Mastermind LP’s culture is focused on inclusivity, social awareness and giving back to its community and employees.

20. Mastermind LP is centrally managed from Ontario, where its headquarters and distribution centre are located, along with the majority of its retail stores. Mastermind LP has always had a strong presence in Ontario. Indeed, in 2010, when BHEPMI acquired its majority interest in the business, Mastermind LP had 11 locations in the Greater Toronto Area.

21. Over the past decade, BHEPMI and other minority equity holders have invested significant capital in the business, allowing Mastermind LP to professionalize its management team and e-commerce capabilities while expanding its store footprint up to 69 locations in eight provinces at its peak. Despite these efforts, along with various cost containment initiatives, Mastermind LP has continued to incur significant losses and negative cash flow, and as a result, it is no longer a viable business in its present form.

Leases and Retail Stores

22. The Mastermind Entities do not own any real property. Mastermind LP currently operates its retail business in 66 leased stores across eight provinces, with an average store size of 5,000 square feet. The majority of Mastermind LP's stores are outside of shopping malls, with 30 stores located in power centres, 25 stores located in shopping plazas, six stand-alone stores and five stores in shopping malls. The rent for the 66 locations totals approximately \$1,250,000 per month, all of which is paid current.

23. Mastermind LP operates six stores in British Columbia, 13 stores in Alberta, three in Saskatchewan, two in Manitoba, 35 in Ontario, three in Nova Scotia, three in New Brunswick and one in Newfoundland and Labrador. A chart setting out the retail store locations and details of the Mastermind Entities' leases is set out in **Schedule "1"**.

24. Both the main headquarters and distribution centre for Mastermind LP operate out of leased premises at 415-419 Milner Avenue, Toronto ON M1B 2L1. The annual rent associated with this leased premises from August 1, 2023 to July 31, 2024 is approximately \$900,000.

25. Mastermind LP is the tenant under some of the leases, and Mastermind GP is the tenant under others. The leases vary with respect to the remaining term of the lease and any renewal rights thereunder. The landlords for each lease also vary. Some landlords are large corporate owners of power centres, shopping malls and plazas that lease multiple retail locations to the Mastermind Entities. The remainder of the retail stores are leased from smaller independent landlords. A list of the Mastermind Entities' landlords is included at **Schedule "2"**.

26. The Mastermind Entities have paid all rent due under their leases and, to my knowledge, have not defaulted under any lease. The majority of rent is paid on the first of each month.

Employees

27. Mastermind LP currently employs approximately 800 employees, consisting of 625 part-time store associates and 175 full-time employees. The employees are not unionized. Each store generally staffs a full-time store manager in addition to an average of 9 Play Experts, comprised of both part-time and full-time employees.

28. During the upcoming Holiday Period, bi-weekly payroll for store employees is expected to be approximately \$800,000. Mastermind LP provides health, dental, life insurance and vision benefits to certain of its employees, but it does not provide or administer any pension plans or RRSP. Mastermind LP's obligations to employees are current, as are employee source deductions.

29. In addition to Mastermind LP's approximately 800 employees, Mastermind LP relies on certain "staffing agencies" to provide temporary staffing at its distribution centre during the Holiday Period.

Senior Management

30. Mastermind LP has a board of directors consisting of two BHEPMI representatives.

31. Mastermind LP employs a dedicated and highly experienced management team.

In addition to my role as CFO, the leadership team consists of the following people:

- (a) Frank Zita is the President and Chief Merchant ("**President**"). Mr. Zita joined Mastermind LP in 2022 as Vice President of Merchandising and Curation, leading the merchandising and curation teams in addition to the supply

chain team. Mr. Zita was appointed President in May 2023. Prior to his time at Mastermind LP, Mr. Zita held executive roles at a large grocery company.

- (b) Paula Stephens is the Head of Merchandising Strategy & Planning. In this role, she oversees Mastermind LP's go-to market strategy and store allocations. Ms. Stephens began working at Mastermind LP in June 2022.
- (c) Michael Vlasov is the Head of Logistics. Mr. Vlasov joined Mastermind LP in April 2023, and is responsible for all logistical functions, including inbound, warehouse management, web fulfillment and outbound freight.
- (d) Raquel Demakos is the Head of Human Resources. She manages the human resources department, including recruitment, payroll and employee relations. She has been working at Mastermind LP since November 2022.
- (e) Manzar Syed is the IT Infrastructure Manager and oversees all IT services at Mastermind LP. He joined Mastermind LP in April 2021.
- (f) Joanne Tobin is the IT Support Services, Manager. She manages the daily operations of the IT support team and is primarily focused on in store point-of-sale support. She joined Mastermind LP in July 1999.

32. Historically, Mastermind LP paid regular management fees to BHEPMI in exchange for advisory and consulting services, business development functions and other corporate support. In 2020, the annual management fee of approximately \$280,000 (inclusive of HST) was not billed to Mastermind LP given the impact of the COVID-19 pandemic on Mastermind LP's financial performance. BHEPMI subsequently resumed its regular practice by billing management fees in 2021 and 2022, which have been paid.

BHEPMI has not billed any management fees for 2023 due to the financial difficulties facing Mastermind LP.

Merchandising and Supply

33. Mastermind LP focuses on science, technology, robotics, education, arts and math-based toys, games and books. To that end, Mastermind LP sells both branded and private label products. Some of the branded merchandise that Mastermind LP sells includes Hape, Play-Doh, Paw Patrol, Magna-Tiles, Farber-Castell, Snap Circuits and Original Squishmallows. In addition, Mastermind LP has longstanding relationships with several key trade partners, including Lego, Hasbro, Mattel, Spin Master, and Ravensburger. Mastermind LP has focused on negotiating exclusive relationships with manufacturers and distributors and “first-to-market launches” in respect of several branded products, which has helped Mastermind LP develop a niche in the Canadian toy retail market.

34. Mastermind LP sources the majority of its inventory from Canadian, American and international suppliers on a purchase order basis. Approximately 30% of Mastermind LP’s merchandise purchases are procured from overseas vendors. Historically, Mastermind LP has received 30- to 60-day payment terms and, with particular higher volume vendors, participates in certain rebate and marketing spend programs.

35. In addition, and as set out above, Mastermind LP also sells private label products. One of Mastermind LP’s material vendors sources white-label products from various manufacturers in Asia to be branded “Mastermind Toys” and coordinates the delivery of such goods to Mastermind LP.

Distribution

36. On an annual basis, Mastermind LP creates a merchandising plan, including a schedule for purchasing products from various vendors. Specific seasonal strategies are employed, including specialized summer programs, holiday seasons, back-to-school programs and brand promotional opportunities.

37. The vast majority of products are received at Mastermind LP's distribution centre, at which time they are picked, packed and allocated across the store network. Mastermind LP uses third party logistic operators ("**3PLs**") to receive and ship inventory to stores. Mastermind LP has continued to pay its key 3PLs in the ordinary course. On occasion, Mastermind LP uses a 3PL for short-term storage of off-season overstock. During the Holiday Period, Mastermind LP uses a 3PL to receive and process inventory, which is then picked and packed out of the distribution centre. Certain 3PLs are also used for warehousing to address the inventory overflow, and Mastermind LP's primary 3PL, ASL Distribution Services Ltd., will be doing so for 2023.

38. Online orders are either shipped from Mastermind LP's distribution centre or can be picked up in store by customers. The Mastermind Entities are current with key 3PLs and intend to pay all critical 3PLs throughout the course of the proceedings.

E-Commerce

39. Mastermind LP's online platform is accessible at: www.mastermindtoys.com. In 2023 to date, approximately 10% of total sales have been generated online. Mastermind LP estimates that it has approximately 2% of the online toy market share.

Loyalty Programs

40. Mastermind LP launched its “Perks” loyalty program in 2018 to leverage and reward Mastermind LP’s loyal customer base. The program quickly gained a devoted following and, as of today, has over 1.2 million members.

41. Member benefits include early access to sales and “Perk Days”, where discounts or other promotions are offered exclusively to members, such as free shipping days, surprise birthday gifts for kids, special in-store events and free loot-bag assembly.

42. The Perks loyalty program has been successful. Perks members open Mastermind LP email distributions 18-24% of the time that email promotions are sent to members. In addition, Perks members spend more per in-store transaction than regular customers.

Gift Cards

43. Mastermind LP customers can purchase gift cards (“**Gift Cards**”) in-store, online or through other retail outlets, to be redeemed for merchandise either in Mastermind LP’s brick-and-mortar stores or through its website. The Gift Cards are managed by a third party pursuant to various agreements with Blackhawk Network (Canada) Ltd., attached to this Affidavit as **Exhibit “C”**.

44. Mastermind LP receives payment as soon as a Gift Card is purchased. On October 31, 2023, Mastermind LP had a net liability for outstanding Gift Cards of approximately \$5.6 million, net of breakage, or net of any revenues retained by Mastermind LP due to unredeemed Gift Cards.

45. The Gift Card program is designed to increase sales. Consequently, the Mastermind Entities are seeking an Initial Order authorizing Mastermind LP to continue

to honour outstanding Gift Cards at its retail locations until December 24, 2023, but further Gift Cards will not be sold or activated.

Return Policies

46. Prior to the commencement of these CCAA proceedings, Mastermind LP offered full refunds on as-new returns accompanied by the original receipt, consistent with the market practice that retail consumers have come to expect. While Mastermind LP's existing return policies were designed to improve the customer experience, given the proposed liquidation of the business, Mastermind LP will not allow returns after the Initial Order is granted.

Merchant Fees

47. Mastermind LP pays merchant fees to various merchants when its customers use credit cards to pay for products in store or online. These merchant fees apply to all credit card purchases and amount to an average of 1.5 to 2.0% of Mastermind LP's sales. Such fees are paid in the ordinary course and are current as of the date of this Affidavit.

Cost-curtailment

48. Through the liquidation and wind-down process, Mastermind LP will seek to minimize its operating expenses to maximize recovery for its creditors. To that end, I expect that there will be employee terminations in the interim period before the Comeback Hearing.

C. FINANCIAL POSITION OF THE MASTERMIND ENTITIES

49. Mastermind LP's most recent financial statements were prepared as of December 31, 2022, copies of which are attached to this Affidavit as **Exhibit "D"**. While Mastermind

LP historically obtained audited financial statements, the December 31, 2022 audit was not finalized.

50. Since December 31, 2022, Mastermind LP has prepared unaudited financial statements on a monthly basis for the 2023 fiscal year to date, up to October 31, 2023. The most recent figures set out in these documents are summarized below.

Unaudited Income Statement	\$CAD (000s)
Revenue	65,478
Cost of Sales	37,504
Gross Profit	27,974
Wages	14,662
Benefits	2,677
Temporary Wages	746
Rent	12,006
Utilities	1,322
Customer Delivery	640
Gift Bags & Wrapping	132
Merchant Fees	1,141
Marketing	677
Professional Fees	366
Supplies	531
Travel & Entertainment	182
Repairs & Maintenance	383
IT Support	1,244
Security	121
Freight Costs	2,166
Third Party Logistics	366
Insurance	253
Service Charges	201
General & Administrative Expenses	566
Operating Expenses	40,381
EBITDA	(12,407)
Bonuses	(0)
Separation Costs	(132)
Reported EBITDA	(12,275)
Amortization	2,715
BHEPMI Cost Reimbursements	967
Interest	1,201

Other Expenses	1,000
Income from Investments	(23)
Non-Operating Expenses	5,861
Net Comprehensive Income (Loss)	(18,135)

Unaudited Balance Sheet	\$CAD (000s)
Cash	2,023
Accounts Receivable	860
Prepaid Expenses	1,476
Prepaid Inventory	1,303
Inventory	35,727
Inventory Provision	(758)
Current Assets	40,631
Due From Related Parties	238
Fixed Assets, net	6,754
Goodwill	11,664
Intangible Assets	6,000
Non-Current Assets	24,656
Total Assets	65,287
A/P - Trade	22,146
A/P - Government	48
Accrued Liabilities	3,289
Gift Cards Outstanding	5,639
Deferred Revenue	116
CIBC Revolver	19,460
BCAP Term Loan	6,250
BHEP GRID Note	1,555
Accrued BHEP Interest	104
Deferred Lease Obligations	3,516
Total Liabilities	62,124
Partners' Capital Contribution	44,753
Partners' Income	(21,836)
Partners' Distribution	(1,169)
Investment in Preferred Shares	(450)
Net Income	(18,135)
Partners' Equity	3,162
Total Liabilities + Partners' Equity	65,287

Assets

51. As of October 31, 2023, the assets of Mastermind LP have a book value of approximately \$65.3 million and consist of the following:

	<i>\$CAD (000s)</i>
Cash	2,023
Accounts Receivable	860
Prepaid Expenses	1,476
Prepaid Inventory	1,303
Inventory	35,727
Inventory Provision	(758)
Current Assets	40,631
Due From Related Parties	238
Fixed Assets, net	6,754
Goodwill	11,664
Intangible Assets	6,000
Non-Current Assets	24,656
Total Assets	65,287

Liabilities

52. As of October 31, 2023, the liabilities of Mastermind LP are approximately \$62.1 million and consist of the following:

	<i>\$CAD (000s)</i>
A/P - Trade	22,146
A/P - Government	48
Accrued Liabilities	3,289
Gift Cards Outstanding	5,639
Deferred Revenue	116
CIBC Revolver	19,460
BCAP Term Loan	6,250
BHEP GRID Note	1,555
Accrued BHEP Interest	104
Deferred Lease Obligations	3,516
Total Liabilities	62,124

53. As set out in the following table, Mastermind LP has been operating at a loss for several years, despite efforts to cut costs and increase revenues. Mastermind LP is in a

negative working capital position, and Mastermind LP is suffering from a liquidity crisis. It is unable to meet its obligations as they become due.

\$CAD (000s)	2018	2019	2020	2021	2022	YTD2023 ¹
Sales	137,795	120,819	107,721	143,443	129,592	65,478
EBITDA	5,812	520	598	6,618	(3,988)	(12,407)
Net Income (Loss)	(875)	(5,313)	(7,402)	1,272	(9,031)	(18,135)

¹Based on unaudited financial results as of October 31, 2023

D. INDEBTEDNESS

(i) Secured Obligations

The CIBC Facilities

54. CIBC is the senior secured lender to Mastermind LP under a credit agreement dated October 24, 2014 between, *inter alia*, CIBC, Mastermind LP, as borrower, and Mastermind GP, as guarantor, (as such agreement was amended from time to time⁵, the “**Credit Agreement**”), which is attached to this Affidavit as **Exhibit “E”**.

55. During 2020, as a result of the pandemic, all stores were closed at various periods of time. Sales were materially and adversely impacted and had decreased 11% compared to 2019. At the same time, the Government of Canada introduced the Business Credit Availability Program (“**BCAP**”) through the Export Development Corporation (Canada) (the “**EDC**”) to provide additional liquidity to support businesses during the pandemic. Mastermind LP applied for the BCAP to inject much needed liquidity into the business.

⁵ Pursuant to CIBC Credit Agreement dated October 24, 2014; CIBC 1st Amending Agreement dated July 29, 2015; CIBC 2nd Amending Agreement dated April 4, 2016; CIBC 3rd Amending Agreement dated September 26, 2016; CIBC 4th Amending Agreement dated April 24, 2017; CIBC 5th Amending Agreement dated July 25, 2017; CIBC 6th Amending Agreement dated January 14, 2019; CIBC 7th Amending Agreement dated January 22, 2020; CIBC 8th Amending Agreement dated June 11, 2020; CIBC 9th Amending Agreement dated May 20, 2021 and effective as of January 1, 2021; CIBC 10th Amending Agreement dated July 23, 2021; CIBC 11th Amending Agreement dated May 19, 2022.

56. On June 11, 2020, the Credit Agreement was amended pursuant to an amending agreement (the “**Amending Agreement**”) to accommodate Mastermind LP’s request for \$6.25 million under the BCAP (the “**BCAP Term Loan**”), with CIBC as lender and EDC as guarantor.⁶ A copy of the Amending Agreement is attached to this Affidavit as **Exhibit “F”**.

57. Under the Credit Agreement, as amended, CIBC has committed a total loan facility of \$36,250,000, including: (i) \$30,000,000 in the form of a revolving credit facility (the “**Revolving Loan Facility**”); and (ii) the BCAP Term Loan in the amount of \$6.25 million.

58. The Revolving Loan Facility is a borrowing base facility. Availability under the facility is based on the value of inventory in possession of Mastermind LP, inventory in transit and credit card accounts receivables, less certain deductions and reserves. Consequently, as Mastermind LP’s financial circumstances and ability to purchase inventory have deteriorated, the availability under the Revolving Loan Facility has decreased.

59. As general partner of Mastermind LP, Mastermind GP is liable for any of Mastermind LP’s defaults under the Credit Agreement. In addition, Mastermind GP is a guarantor of the obligations of Mastermind LP under the Credit Agreement on a secured basis pursuant to a guarantee dated October 24, 2014 (the “**Guarantee**”). A copy of the Guarantee is attached to this Affidavit as **Exhibit “G”**.

60. As further described below, Mastermind LP has defaulted under the Credit Agreement.

⁶ Pursuant to the Credit Agreement, EDC has guaranteed repayment of 80% of the principal amount of the BCAP Term Loan.

Grid Promissory Notes

61. On June 11, 2020, Mastermind LP issued grid promissory notes on a secured basis in favour of: (i) Birch Hill Equity Partners (Entrepreneurs) IV, LP ("**ELP**") in the amount of \$13,182; (ii) Birch Hill Equity Partners IV, LP, ("**Canadian LP**") in the amount of \$500,190; and (iii) Birch Hill Equity Partners (US) IV, LP ("**US LP**") in the amount of \$736,628. The purpose of the grid notes was to inject cash flow into the business and facilitate access to the BCAP Term Loan.

62. Each of the grid promissory notes issued to ELP, Canadian LP and US LP (collectively, the "**Birch Hill Lenders**") is interest bearing at a rate equal to 10% per annum. Interest on the grid promissory notes accrues daily and is payable in arrears on December 31. Copies of the original grid promissory notes are attached to this Affidavit as **Exhibit "H"**. At each fiscal year end on December 31, the interest outstanding on the notes is payable in kind by issuing a new promissory note in the principal amount of the unpaid interest (each, a "**PIK Note**"). Attached to this Affidavit as **Exhibit "I"** are copies of the PIK Notes and an excel spreadsheet setting forth the dates on which they were issued.

Personal Property Security

63. The obligations of Mastermind LP and Mastermind GP under the Credit Agreement and Guarantee, respectively, are secured by (a) a general security agreement between CIBC and Mastermind GP dated October 24, 2014, and (b) a general security between CIBC and Mastermind LP dated October 24, 2014 (collectively, the "**Security**"). Attached to this Affidavit at **Exhibit "J"** is a copy of the Security. Pursuant to the terms of the

Security, Mastermind LP and Mastermind GP granted CIBC a security interest in all of their present and after acquired personal property.

64. CIBC registered the Security under the personal property regimes in: Ontario, British Columbia and Alberta on October 16, 2014; Saskatchewan on March 3, 2016; Manitoba on July 24, 2015; and Nova Scotia, New Brunswick and Newfoundland and Labrador on June 3, 2020.

65. Attached to this Affidavit as **Exhibit “K”** is a copy of *Personal Property Security Act* searches with a file currency of November 12, 2023 against both Mastermind LP and Mastermind GP in the personal property registers in each of the Provinces stated above (collectively, the “**Searches**”).⁷ The Searches show no registrations against Mastermind LP or Mastermind GP other than those in favour of: (i) CIBC; and (ii) the Birch Hill Lenders.

66. On June 11, 2020, Mastermind LP and the Birch Hill Lenders entered into a subordination and postponement agreement with CIBC (the “**Subordination Agreement**”), agreeing to subordinate and postpone their subordinate indebtedness to the indefeasible repayment of in full by Mastermind LP of the obligations of Mastermind LP in favour of CIBC. A copy of the Subordination Agreement is attached to this Affidavit as **Exhibit “L”**.

Bank Act Security

67. On October 22, 2014, Mastermind LP gave CIBC security under section 427 of the *Bank Act (Canada)* to CIBC (the “**Bank Act Security**”). A copy of the documents in connection with the Bank Act Security are attached to this Affidavit as **Exhibit “M”**.

⁷ I am advised of this fact by Lisa Hughes, a law clerk at Davies Ward Phillips & Vineberg LLP, who conducted the Searches, and believe this to be true.

68. *Bank Act* searches against Mastermind LP dated November 13, 2023 in Ontario showed no registrations against Mastermind LP other than those in favour of CIBC.⁸ *Bank Act* searches against Mastermind LP and Mastermind GP in all of the Provinces⁹ where Mastermind LP has store locations showed no registrations. Attached as **Exhibit “N”** to this Affidavit is a copy of the *Bank Act* searches.

(ii) Defaults under the Credit Agreement

69. Since October 2022, Mastermind LP has been in default under the Credit Agreement for failure to maintain certain financial covenants. Specifically, Mastermind LP has been in breach of its Fixed Charge Coverage Ratio (as defined in the Credit Agreement) covenant since December 31, 2022 and has failed to maintain the minimum EBITDA covenant from April 30, 2023 onward (together, the “**Defaults**”).

70. The Credit Agreement provides that upon an “Event of Default” (as defined thereunder), CIBC can, *inter alia*, reduce or terminate its commitments, adjust any elements used in computing the borrowing base, restrict the amounts of or refuse to make available the Revolving Loan Facility or the BCAP Term Loan, or declare any and all obligations to be immediately due and payable. Moreover, the Credit Agreement and the Guarantee both provide that upon an “Event of Default” (as defined in the Credit Agreement), the obligations of the Guarantor shall be due and owing.

71. On November 13, 2023, counsel for CIBC sent notice of the Defaults to Mastermind LP and indicated that CIBC was reserving all rights in that regard. A copy of the letter is attached to this Affidavit as **Exhibit “O”**.

⁸ I am advised of this fact by Lisa Hughes, a law clerk at Davies Ward Phillips & Vineberg LLP, who conducted the *Bank Act* searches, and believe this to be true.

⁹ British Columbia, Alberta, Saskatchewan, Manitoba, Nova Scotia, New Brunswick, Newfoundland and Labrador.

72. As of October 31, 2023, Mastermind LP and Mastermind GP were indebted to CIBC under the Credit Agreement in the following principal amounts:

(a) Revolving Loan Facility: \$19,460,000

(b) BCAP Term Loan: \$6,250,000

(iii) **Unsecured Creditors**

Trade Creditors

73. As of October 31, 2023, Mastermind LP owes approximately \$22,146,000 in accounts payable to trade creditors. These amounts are unsecured. The majority of this balance relates to merchandise vendors, as well as shipping and logistics providers.

Employee Liabilities

74. As of November 16, 2023, there is approximately \$120,000 outstanding in accrued vacation pay, a relatively modest obligation as the majority of Mastermind LP's store-level employees do not accrue vacation days but are instead paid such amounts in cash as part of the regular bi-weekly payroll. Mastermind LP also provides benefits to certain of its employees through the following benefits providers: (i) The Canada Life Assurance Company (at a cost of approximately \$53,000 per month); (ii) RBC Life Insurance Company (at a cost of approximately \$12,000 per month); and (iii) Telus Health (Canada) Ltd. (at a cost of approximately \$1,700 per quarter). Mastermind LP's payments to the foregoing benefit providers are current as of the date of this Affidavit.

75. The payroll cycle for store and non-store employees is bi-weekly, one-week in arrears. As a result, for each pay period, payroll is funded to Ceridian on Thursday and remitted to employees on Friday in respect of the employee's pay for the prior week.

Employee payroll is expected to amount to approximately \$1 million bi-weekly during the Holiday Period.

Litigation/Contingent Liabilities

76. As of November 13, 2023, neither Mastermind LP nor Mastermind GP are party to any litigation that materially impacts the business or the planned liquidation.

(iv) Total Indebtedness

77. The total of Mastermind LP's obligations as of October 31, 2023 is as follows:

	\$CAD (000s)
A/P - Trade	22,146
A/P - Government	48
Accrued Liabilities	3,289
Gift Cards Outstanding	5,639
Deferred Revenue	116
CIBC Revolver	19,460
BCAP Term Loan	6,250
BHEP GRID Note	1,555
Accrued BHEP Interest	104
Deferred Lease Obligations	3,516
Total Liabilities	62,124

Charity Collections

78. In the ordinary course, Mastermind LP collects money for various charities as part of its "Play to Give" program. As of October 31, 2023, Mastermind LP holds approximately \$40,000 that it collected for such charities, which include Right to Play, Canada's Children's Hospital Foundations, Kids Help Phone and Books that Give Back Canada. Mastermind LP plans to remit any money collected for the purpose of a specific charity to that charity and will stop collecting on behalf of those charities once the Initial Order is granted

E. THE MASTERMIND ENTITIES' DETERIORATING FINANCIAL CIRCUMSTANCES

79. In recent years, the toy industry experienced a significant shift as buyers began making online purchases with greater frequency, and, in particular, as Amazon gained significant market share at the expense of independent retailers.

80. Mastermind LP's profitability increased until it peaked in 2017. Thereafter, profitability began to decline as input costs continued to rise and revenue stagnated. As the toy industry has become increasingly commoditized and competitive, Mastermind LP's margins have continued to diminish.

81. In response to these troublesome market trends, Mastermind LP launched a number of initiatives to restore market share, revenues and profitability. In 2018, Mastermind LP launched its Perks loyalty program. In 2019, four new stores opened in Ontario and British Columbia as part of an overall expansion effort. However, Mastermind LP's market share continued to decline. In 2019, revenue declined over 12% from \$138 million in 2018 to \$121 million in 2019.

82. Following two poorly performing financial years, in early 2020 Mastermind LP transitioned its senior leadership team with a focus on being digitally competitive and introducing a private label product line to increase customer loyalty. Unfortunately, when the COVID-19 pandemic arose shortly thereafter, sales decreased significantly due to government-mandated store closure orders.

83. The pandemic resulted in all Mastermind LP brick-and-mortar locations being closed at different periods of time throughout 2020 and 2021. Mandated closures and capacity restrictions limited sales. As a result, Mastermind LP launched "buy online pick-up in-store" ("**BOPIS**") to ameliorate lower sales. Although Mastermind LP received industry awards

in 2020 for these efforts, including “Most Innovative Retailer of the Year” at the Tagie Awards and the Game International Excellence Award, sales and profitability continued to decline.

84. The shift to online shopping has been a perpetual obstacle. Online platforms require significant upfront and ongoing IT investments to remain competitive, and the cost of delivery is also significant. The impact of these two factors materially reduces profit margins, making the e-commerce business less profitable than the brick-and-mortar channel. E-commerce businesses require significant scale to be profitable, which Mastermind LP has not yet achieved, making it difficult to compete against online behemoths such as Amazon and Walmart. As of the end of the 2020 financial year, total revenues were down by approximately 11% to \$107.7 million when compared to 2019.

85. The long-term inflationary impacts of the pandemic have severely impacted Mastermind LP and other Canadian retailers. Since the COVID-19 pandemic, the cost of raw inputs to build toys, including plastic resin, and freight costs have increased. As a result, vendors are increasing costs, which are passed onto consumers who are increasingly cost sensitive.¹⁰

86. Despite these challenges, Mastermind LP continued to make every effort to win back market share and increase revenues and profitability. In 2021, Mastermind LP launched “Mastermind Toys Baby”, a private-label for baby toys. Mastermind Toys Baby targets new parents by offering a curated selection of toys, books and baby products

¹⁰ Brett Bundale “[Consumers opting for cheaper toys as inflation soars, toymaker Spin Master says](#)” The Canadian Press (5 May 2022).

suitable for infants under 24 months old. By 2022, Mastermind Toys Baby achieved a 5.5% share of the Canadian baby toy market.¹¹

87. In 2022, Mastermind LP's private brand was launched, which had margins of approximately 57%. In comparison, all other products had average margins of 44%. The private brand was launched to leverage Mastermind LP's loyal customer base. The ideation for private brand products are curated by Mastermind LP: some are developed and designed specifically for Mastermind LP, and others are generic white-label products manufactured overseas and labelled with "Mastermind Toys" branding.

88. As of June 2022, sales in the first half of the year were consistent with the first half of 2021; however, the second half of 2022 saw an approximate 20% reduction in sales compared to the same period in 2021. This was an industry wide issue that was not unique to Mastermind LP. Further impacting Mastermind LP's costs were increased freight charges of \$2 million due to supply chain issues and increased temporary labour expenses of \$200,000 due to floorplan repositioning in the warehouse. Reduced sales, gross margin pressures and material one-time costs resulted in negative EBITDA. In 2022, Mastermind LP's gross revenue was down approximately 10% from 2021, and EBITDA margin was approximately (3%) on account of costs, including back office, management, warehouse, freight and IT infrastructure costs. Profit margins also declined substantially in 2022.

¹¹ Circana (NPD) 2022 Industry Reports.

F. RESPONSE TO FINANCIAL DIFFICULTIES

Operational Changes

89. Due to Mastermind LP's ongoing financial troubles, management actioned several initiatives to improve operational efficiencies as identified above. In addition, Mastermind LP began to identify stores to be closed due to poor performance and high fixed costs. During 2023, Mastermind LP decided to close two such store locations (St. Laurent, Ontario and London South, Ontario), which had maturing leases and were underperforming. In addition, Mastermind LP undertook significant cost reductions in February 2023 in response to decreasing sales trends that emerged in 2022 and early 2023.

90. In March 2023, after margins, profits and revenues continued to trend negatively compared to prior years, Mastermind LP sought out advisors to assist in preserving liquidity and identifying strategic alternatives, including a potential going concern sale of the business, as outlined below.

Pre-filing Sale Process

91. On March 8, 2023, Mastermind LP engaged A&M Corporate Finance to advise on available strategic alternatives and to commence a robust sale process for the business (the "**Sale Process**").

92. The Sale Process was structured in two phases. The table below summarizes the key dates and milestones in relation to each phase of the Sale Process:

Sale Process	Date (2023)	Days (Cumulative)
Phase 1		
Commencement of the Sale Process	April 10	44
Phase 1 due diligence	April 10 to May 24	

Provision of Phase 1 Process Letter	May 1	
Phase 1 LOI bid date	May 24	
Analysis of LOIs and selection of Phase 2 participants	May 25 to 29	
Phase 2		
Phase 2 due diligence	Commenced May 30	75 (119)
Provision form of APA	June 16	
Withdrawal of remaining Phase 2 Participants	Mid-August	
Execution of Equity Purchase Agreement with the Strategic Buyer	September 22	

93. I am advised by A&M Corporate Finance that the timeline established for the Sale Process was similar to timelines typically undertaken within sales processes conducted for distressed entities.

Phase 1 of the Sale Process

94. The first phase (“**Phase 1**”) of the Sale Process commenced on April 10, 2023. During Phase 1, A&M Corporate Finance contacted 95 potential bidders throughout Canada, the United States, and Europe. Of these bidders, 32 executed non-disclosure agreements (“**NDAs**”) and received diligence information.

95. On May 24, 2023, four parties submitted Phase 1 non-binding LOIs. I am advised by A&M Corporate Finance that the parties who did not submit LOIs refrained from doing so for the following reasons: (i) Mastermind LP’s recent financial performance; (ii) the business’ overleveraged position, including the heavily utilized Revolving Loan Facility and the BCAP Term Loan, which would require a substantial investment to recover liquidity; and (iii) a general lack of interest in the competitive, retail toy category.

96. Of the four parties who submitted LOIs, two qualified to advance to the second phase (“**Phase 2**”) of the Sale Process because they were identified as higher value bidders and capable of closing a transaction (the “**Qualified Bidders**”).

Phase 2 of the Sale Process

97. Phase 2 commenced on May 30, 2023. During the months of June through August, each of the two Qualified Bidders conducted extensive due diligence, participated in management meetings and engaged financial and legal advisors to advance a potential transaction. Unfortunately, during this period, Mastermind LP’s business continued to underperform, with negative trends in sales and a worsening liquidity position. Indeed, Mastermind LP’s sales were trending approximately 25% below the prior year. Primarily as a result of this underperformance and Mastermind LP’s liquidity and working capital profile at that time, both of the Qualified Bidders withdrew from the Sale Process.

98. After both Qualified Bidders withdrew from the Sale Process, A&M Corporate Finance recanvassed the market for a going concern purchaser. At that time, the Strategic Bidder was the only remaining party who expressed an interest in purchasing Mastermind LP and that had the financial capability and willingness to assume all of its liabilities. The Strategic Bidder ultimately proposed the Going Concern Transaction and signed the Equity Purchase Agreement on September 22, 2023, agreeing to purchase all equity interests in Mastermind LP and Mastermind GP by the Outside Date.

99. The Going Concern Transaction was subject to mandatory pre-merger notification under the *Competition Act* because it satisfied applicable notification thresholds.¹² On

¹² As noted above, I have been advised by Davies Ward Phillips & Vineberg LLP as to the facts related to the pre-merger notification process and subsequent interactions with the Competition Bureau, and I believe these facts to be true.

September 26, 2023, the Strategic Bidder submitted a request for an advance ruling certificate, or in the alternative a “no-action letter”, in respect of the Going Concern Transaction to the Commissioner. Shortly thereafter, on October 10, 2023, the Mastermind Entities and the Strategic Bidder filed their respective pre-merger notifications, commencing a 30-day statutory waiting period.

100. Over the course of the waiting period, the parties engaged in numerous discussions with and submitted significant volumes of information to the Competition Bureau to assist in the Competition Bureau’s review of the Going Concern Transaction. Among other discussions and submissions, Mastermind LP made submissions to the Competition Bureau: (i) in support of its status as a “failing firm” within the meaning of the Competition Bureau’s Merger Enforcement Guidelines;¹³ (ii) asserting that it did not have the time or resources to comply with a SIR given its liquidity constraints; (iii) that the issuance of a SIR would likely result in the Going Concern Transaction being terminated and the Mastermind Entities being required to commence CCAA proceedings; and (iv) that if the Commissioner did not issue a SIR and allowed the 30-day statutory period to lapse, the parties could close the Going Concern Transaction, which would preserve the Mastermind LP assets as a standalone business and preserve the Commissioner’s ability to challenge the Going Concern Transaction up to one year following closing if, in theory, the Commissioner ultimately concluded that a remedy was required. It was made clear to the Competition Bureau that the Strategic Bidder was the only party willing to acquire Mastermind LP in its entirety, assuming responsibility for all employees, store leases and

¹³ See: https://ised-isde.canada.ca/site/competition-bureau-canada/en/how-we-foster-competition/education-and-outreach/publications/merger-enforcement-guidelines#s13_0.

creditors (both secured and unsecured). The Going Concern Transaction was the only potential transaction that would have preserved value for all stakeholders.

101. Despite these efforts, on November 8, 2023, the Commissioner issued SIRs, to the Mastermind Entities and the Strategic Bidder. The SIR issued to the Mastermind Entities is attached to this Affidavit as **Exhibit “P”**. Issuance of the SIRs meant that the statutory waiting period was extended such that the parties were prohibited from closing the Going Concern Transaction until 30 days after the parties had complied with the requirements of the SIRs. In light of the time-sensitive liquidity problems that Mastermind LP faced (and continues to face), compliance with the SIRs would have been unduly time consuming and burdensome. As noted above, responses to the SIRs and compliance with the subsequent statutory waiting period would have taken several months and imposed prohibitive costs on the parties. Mastermind LP would not be able to continue operating for the length of time that would be required to respond to the SIR. In addition, it was also not certain that the Commissioner would grant clearance to the transaction following compliance with the SIRs. The effect of the Bureau issuing the SIRs was to preclude closing of the Going Concern Transaction by November 24, 2023, which was the only option that could have saved the Mastermind Entities from formal insolvency proceedings and prevented many of Mastermind LP’s over 800 employees from losing their jobs as a result. The Going Concern Transaction was terminated as of November 8, 2023.

G. URGENCY OF THE APPLICATION

102. The Mastermind Entities are facing exceptional circumstances that require urgent and immediate relief.

103. Following the Sale Process and the failed Going Concern Transaction (described above), the Mastermind Entities, alongside A&M Corporate Finance, evaluated their limited remaining options and ultimately concluded that their financial position could not support furthering the Sale Process. Mastermind LP does not have sufficient free cash flow and liquidity to continue running its business in the ordinary course, and its revenues continue on a downward trajectory. With no prospect of improvement, the Mastermind Entities will run out of cash before they are able to pursue a new potential transaction, and it is unlikely that any more parties would be interested in purchasing the business outside of the context of these proceedings at this time. Indeed, given the lack of cash and downward sales trends, relief under the CCAA is the only option to provide Mastermind LP with the protections it needs to complete a liquidation of its business and the Potential CCAA Transaction or pursue other strategic options.

104. Mastermind LP has materially reduced its merchandise inventory purchases, reduced certain variable costs and has delayed a material amount of payments to merchandise suppliers. Specifically, as compared to Mastermind LP's average vendor terms of approximately 45 days, Mastermind LP has stretched its current days payable in excess of 85 days. The minimal liquidity that Mastermind LP does have is only available because it has delayed payments to suppliers, which Mastermind LP did in anticipation of closing the Going Concern Transaction and knowing that those suppliers would be paid under new ownership.

105. As at October 31, 2023, Mastermind LP is holding approximately \$35.0 million in inventory as compared to \$41.3 million at this time last year. In addition, there is approximately \$1 million of overseas product held at the border pending payment from

Mastermind LP. Typically, when Mastermind LP submits a purchase order to an international vendor, it is required to pay a deposit, with the balance payable upon receipt of the goods. As a result, Mastermind LP cannot take possession of products sourced from overseas, and they will not be released from the border, until any outstanding amounts are paid. Mastermind LP has not been able to pay its international suppliers. The reduction in inventory in Mastermind LP's possession has negatively impacted the borrowing base under the Revolving Loan Facility and by extension, reduced the availability of credit to Mastermind LP.

106. Mastermind LP is currently operating on a week-to-week basis from a cash-flow perspective. In addition, Mastermind LP is in default under the Credit Agreement and Mastermind GP does not have the ability to inject any capital into Mastermind LP.

107. As described above, the primary purpose of this CCAA proceeding is to seek this Court's approval of the Consulting Agreement to be entered into to enable the Mastermind Entities to conduct an orderly liquidation of the "Mastermind Toys" business (described and defined below as the Liquidation Sale) and to provide the Mastermind Entities the flexibility needed to pursue other strategic options. Specifically, the Mastermind Entities are seeking this Application on an urgent basis so that they can continue to pursue the Potential CCAA Transaction while preparing for the proposed liquidation as quickly as possible during the Holiday Period, such that the Mastermind Entities can take advantage of the high sales volume generated during the holiday shopping period for the benefit of their stakeholders.

PART II – RELIEF SOUGHT

A. THE INITIAL ORDER

108. As described in paragraph 3 above, the Applicant is seeking an Initial Order, among other things:

- (a) declaring that Mastermind GP is a party to which the CCAA applies and that Mastermind LP shall be bound by the Initial Order and enjoy the protections, authorizations and benefits thereof;
- (b) granting a stay of proceedings against the Mastermind Entities;
- (c) appointing the Proposed Monitor;
- (d) permitting the Mastermind Entities' continued use of the Cash Management System;
- (e) granting the Administration Charge and D&O Charge and the priorities of such charges; and
- (f) setting a hearing date for the Comeback Hearing.

(i) Stay of Proceedings

109. The Mastermind Entities, which are currently in default of many of their ordinary course obligations, require a stay of proceedings and the other protections afforded by the CCAA to provide them with the breathing room needed to implement the liquidation sale and pursue other strategic options, such as the Potential CCAA Transaction. It would be highly disruptive and potentially detrimental to such liquidation sale if rights or remedies were executed against the Mastermind Entities while the liquidation sale was underway.

110. The Mastermind Entities are requesting a short eight (8) day stay until the Comeback Hearing but anticipate requesting a further stay until January 28, 2024 at the Comeback Hearing.

111. With the assistance of the Proposed Monitor, the Mastermind Entities have conducted a cash flow analysis to determine the amount required to finance their business operations and the costs of these CCAA proceedings, assuming the Initial Order is granted, over the 10-week period from November 23, 2023 to January 28, 2024 (the “**Cash Flow Projection**”). I understand that the Cash Flow Projection will be appended to the Proposed Monitor’s pre-filing report and will demonstrate that the Mastermind Entities have sufficient cash to fund their operations and the costs of these CCAA proceedings during the requested 10-week period provided the relief contemplated under the Initial Order and the ARIO is granted. The cash flow forecast will be included in the report of the Proposed Monitor.

(ii) The Proposed Monitor

112. Pursuant to the Initial Order, the Applicant is asking this Court to appoint A&M as monitor. A&M has extensive experience in large and complex insolvency proceedings under the CCAA, including a number of recent retail insolvencies and restructurings.

113. As described herein, A&M Corporate Finance, which is affiliated with A&M, has been involved with the Mastermind Entities since early 2023 and is intimately familiar with the “Mastermind Toys” business, the financial position of the Mastermind Entities and the relief requested by the Mastermind Entities. Under each of its previous engagements, A&M Corporate Finance billed at its standard hourly rates and was not engaged on a success fee or contingency fee basis.

114. I am advised by A&M that it is a “trustee” within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, and that it is not otherwise precluded from acting as monitor under subsection 11.7(2) of the CCAA. A&M has consented to act as monitor in these proceedings, if appointed. A copy of A&M’s consent is attached to this Affidavit as **Exhibit “Q”**.

(iii) Cash Management System

115. In the ordinary course of business, Mastermind LP uses a centralized cash management system administered by its treasury group from its head office in Scarborough, which collects, transfers and disburses funds generated by its store network and webstore platform (the “**Cash Management System**”).

116. Mastermind LP has four bank accounts, each maintained with CIBC: two deposits accounts and two disbursements accounts. In addition to these primary accounts, Mastermind LP also holds “CIBC Rapidtrans” accounts at certain store locations to collect all cash and credit card receipts. Cash receipts collected by CIBC Rapidtrans accounts are automatically moved into the main collections account on a daily basis and applied against the Revolving Loan Facility.

117. An overview of Mastermind LP’s four bank accounts is as follows:

- (a) a Canadian dollar deposit account, which receives store deposits from the CIBC Rapidtrans accounts, as well as other collections from vendors and other sources. The proceeds from the sale of inventory or other property is deposited in the Canadian dollar deposit account and automatically applied against the balance of the Revolving Loan Facility daily;
- (b) a Canadian dollar disbursement account, which is directly funded from the Revolving Loan Facility. Mastermind LP uses this account as its primary

disbursements account for all Canadian dollar merchandise and non-merchandise disbursements, and to fund payroll via Ceridian;

- (c) a U.S. dollar disbursement account, which is funded from the Revolving Loan Facility, converted into U.S. dollars by CIBC at its prevailing exchange rate. These funds are used to make U.S. dollar merchandise and non-merchandise disbursements; and
- (d) a U.S. dollar deposit account, which is maintained to collect any U.S. dollar receipts.

118. Mastermind LP's treasury department reviews and maintains the Cash Management System on a daily basis, and reviews and reconciles all cash activity on a monthly basis. Interest and bank fees are automatically applied against the Revolving Loan Facility on a monthly basis.

119. The Mastermind Entities are still settling the terms upon which CIBC will continue to make the Revolving Loan Facility available to the Mastermind Entities during the course of these CCAA proceedings. The Mastermind Entities anticipate that for the period between the date of the Initial Order and the date of the Comeback Hearing, they will continue to utilize the Revolving Loan Facility on a limited basis in accordance with its terms. Accordingly, the Mastermind Entities will continue to pay down the balance of the Revolving Loan Facility on a daily basis through the use of the Cash Management System and daily sweeping of the Canadian dollar deposit account.

120. The Cash Management System is critical to the orderly management of the Mastermind Entities' business affairs and continued availability of the Revolving Loan Facility. Accordingly, the Mastermind Entities are seeking to continue to operate the Cash

Management System post-filing in substantially the same manner as before the commencement of these CCAA proceedings.

(iv) Priority Charges

121. In order to ensure the continued operation of the Mastermind Entities during the CCAA proceedings, the Mastermind Entities are seeking certain charges over the assets of the Mastermind Entities in the following priority: (a) the Administration Charge; and (b) the D&O Charge.

(a) Administration Charge

122. As the Mastermind Entities navigate these CCAA proceedings and implement a liquidation of Mastermind LP, they will need to rely on their counsel, the Proposed Monitor and the Proposed Monitor's counsel. Accordingly, the Mastermind Entities are seeking that the Proposed Monitor (and its lawyers) and their lawyers be granted a court-ordered charge on present and future assets, property and undertakings of the Mastermind Entities as security for any respective fees and disbursements up to a maximum of \$750,000 for the Initial Order. The Administration Charge is proposed to rank ahead of, and have priority over, the D&O Charge. None of the proposed beneficiaries of the Administration Charge currently have retainers.

123. The expertise and continued participation of the beneficiaries of the Administration Charge is essential to the success of these CCAA proceedings. The Mastermind Entities, in consultation with the Proposed Monitor, determined the quantum of the Administration Charge required until the Comeback Hearing, having regard for the professionals' accrued fees and retainers. Such quantum is commensurate with the fees and disbursements expected to be incurred by the beneficiaries of the Administration Charge

by the Comeback Hearing. The quantum of the Administration Charge is proposed to be increased at the Comeback Hearing.

(b) Directors & Officers Charge

124. The Mastermind Entities seek a D&O Charge on their assets in favour of their directors and officers in an amount not to exceed \$4,000,000 to indemnify them in respect of liabilities they may incur as directors and officers during these CCAA proceedings. The D&O Charge will rank behind the Administration Charge.

125. I am advised that the Mastermind Entities maintain director and officer insurance but the insurance may include contractual contingencies and uncertainty associated with possible coverage. Mastermind LP has a director and officer insurance policy through AIG Insurance Company of Canada (the “**AIG Policy**”). The limit of liability under the AIG Policy is \$5,000,000 per claim per policy period in the aggregate, including defence costs. The AIG Policy affords coverage to the directors and officers of Mastermind LP for any matter claimed against them by reason of their status as directors or officers except when and to the extent that Mastermind LP has indemnified any such matter. The AIG Policy excludes payment for any loss in connection with any claim that includes, among others, the refusal, failure or inability to pay wages or overtime pay, worker’s compensation, disability benefits, unemployment compensation or similar law. A copy of the AIG Policy is attached to this Affidavit as **Exhibit “R”**.

126. In addition, BHEPMI has director and officer insurance policies through Liberty Mutual Insurance Company of Canada (the “**Liberty Mutual Policy**”) and Chubb Insurance Company of Canada (the “**Chubb Policy**”). Both policies cover the directors and officers of BHEPMI’s subsidiaries, such as the Mastermind Entities, up to, respectively, \$10 million and \$5 million per claim per policy period in the aggregate,

including defence costs. In addition, both policies afford coverage to directors and officers for any matter claimed against them by reason of their status as directors and officers, except when and to the extent that the Mastermind Entities have indemnified any such matter. The Liberty Mutual Policy excludes coverage for, among other things, any loss based upon the valuation of salary, wages, commission, benefits, bonus, compensation or any other remuneration.

127. The Mastermind Entities have agreed to indemnify the directors and officers of Mastermind LP for all liabilities arising post-filing except due to their gross negligence or wilful misconduct. However, the Mastermind Entities do not have sufficient funds to satisfy those indemnities should the directors or officers of Mastermind LP be found responsible for potential liabilities. Moreover, the Mastermind Entities were unable to obtain adequate additional indemnification insurance at a reasonable cost.

128. Given the Mastermind LP's current financial position, the directors and officers of the Mastermind LP have indicated that they will not stay in office without being offered full protection from liability. As such, the Mastermind Entities request that the D&O Charge be granted pursuant to the Initial Order to protect their directors and officers against obligations and liabilities they may incur to the degree that they cannot satisfy their indemnification obligations.

129. The quantum of the D&O Charge was determined by the Mastermind Entities, in collaboration with the Proposed Monitor, and is limited to the indemnification obligations and liabilities that the Mastermind Entities' directors and officers may face during the initial eight days of these CCAA proceedings. The amount of the D&O Charge is proposed to be increased at the Comeback Hearing.

B. COMEBACK HEARING

130. If the Initial Order is granted, the Mastermind Entities are requesting a Comeback Hearing to be scheduled within eight days of the granting of the Initial Order, and, in any event, by no later than November 30, 2023. Subject to any changes that may occur between now and the date of the Comeback Hearing, at the hearing the Mastermind Entities intend to address their liquidity needs during the CCAA proceeding and their need to retain certain key employees, among other things, which are more particularly described below. The Mastermind Entities will also seek the priority of the Court-ordered charges set out below.

(i) Forbearance Agreement and Lender's Charge

131. The Mastermind Entities will seek the approval of a Forbearance Agreement with CIBC (the "**Forbearance Agreement**") at the Comeback Hearing. As described above, the Mastermind Entities anticipate that they will continue to use the Revolving Loan Facility on a limited basis until the Comeback Hearing and the approval of the Forbearance Agreement. CIBC has advised the Mastermind Entities that unless a forbearance agreement is agreed upon, it will have no choice but to enforce its rights against the Security, as indicated in the Notice of Default.

132. The parties are still diligently working to settle the terms of the Forbearance Agreement pursuant to which CIBC will continue to make the Revolving Loan Facility available to Mastermind LP during the course of these CCAA proceedings. Its key terms are expected to include the following:

- (a) a priority charge in favour of CIBC in respect of any amounts advanced to the Mastermind Entities under the Revolving Loan Facility during the course of these CCAA proceedings (such amounts being the "**DIP Loan**");

- (b) ongoing cash receipts in the ordinary course of business will be used to pay down the accrued balance under the Revolving Loan Facility; and
- (c) the proceeds of the DIP Loan will only be used to pay post-filing expenses and cannot be used to pay down pre-filing debt obligations under the Revolving Loan Facility.

133. The DIP Loan's approval at the Comeback Hearing will be urgently required for the Mastermind Entities to continue to meet their rent (due on the first day of the month) and payroll obligations (funded on the 30th of the month) while the Mastermind Entities negotiate the Potential CCAA Transaction and commence the Liquidation Sale (as defined below). The Mastermind Entities will also have significant payables to their shipping and logistics providers to ensure the delivery of inventory that was ordered prior to the CCAA filing. Payroll is funded on a bi-weekly basis and Mastermind LP has an upcoming payroll obligation of \$1,000,000 due on November 30, 2023. If the Mastermind Entities do not have continued access to the Revolving Loan Facility through the approval of the Forbearance Agreement, Mastermind LP will be unable to meet these obligations.

(ii) Consulting Agreement and Liquidation Sale

134. As soon as it was apparent that the Sale Process failed to yield a viable sale transaction for Mastermind LP or its assets, the Mastermind Entities began to focus on other alternatives to maximize value for their stakeholders. Accordingly, between November 10, 2023 and November 17, 2023, the Mastermind Entities, in consultation with A&M Corporate Finance, began soliciting bids from professional, third-party liquidators to liquidate the "Mastermind Toys" store inventory, furniture, fixtures and equipment (the "**Liquidation Sale**"). The Mastermind Entities are in the process of entering into a Consulting Agreement with Gordon Brothers Canada ULC, as Agent,

subject to this Court's approval. The Liquidation Sale will commence on November 30, 2023 and end on January 28, 2024.

135. Although the Proposed Monitor is currently engaged with a potential going concern purchaser on the Potential CCAA Transaction, the Mastermind Entities also intend to liquidate certain underperforming stores - and may have to liquidate all of their stores if the Potential CCAA Transaction is unsuccessful. Accordingly, the Mastermind Entities intend to seek approval of the Liquidation Sale at the Comeback Hearing, subject to any change between now and that time.

(iii) Key Employee Retention Plan ("KERP")

136. Subject to any changes between now and the Comeback Hearing, the Mastermind Entities also intend to seek Court-approval of a KERP that applies to those Mastermind LP employees who are crucial in facilitating the Liquidation Sale. The parties contemplated to be included in the KERP have critical industry and factual knowledge of the operations that will assist in the Liquidation Sale. In the absence of a retention plan, it is highly likely these individuals would resign and look for alternative employment, which would exacerbate the challenges of liquidation.

137. As part of the relief at the Comeback Hearing, the Mastermind Entities intend to seek this Court's permission to seal the identities and titles of the recipients of the KERP and to seek other relief under the *WEPPA*.

(iv) Priority Charges

138. At the Comeback Hearing, subject to any changes, the Mastermind Entities intend to seek approval of the following charges in priority:

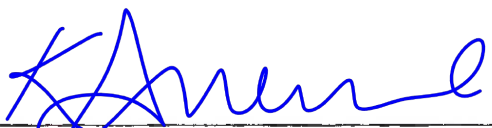
- (a) an increase in the Administration Charge granted in favour of the Proposed Monitor (and its lawyers) and the Mastermind Entities' lawyers, to a maximum of \$1,000,000;
- (b) an increase in the D&O Charge granted in favour of the Mastermind Entities' directors and officers, to a maximum amount of \$7,250,000;
- (c) the Lender's Charge in the amount of \$30,000,000; and
- (d) a KERP charge on the assets of the Mastermind Entities in the amount of \$485,250, which ranks behind the Lender's Charge, the Administration Charge and the D&O Charge.

C. CONCLUSION

139. For the reasons set out above, I believe that the relief requested on this Application is in the best interests of the Mastermind Entities and their stakeholders. Without the requested relief, including the approval of the Consulting Agreement and the Liquidation Sale, the value of the Mastermind Entities' assets are at risk of deteriorating and recoveries to their stakeholders would be reduced.

140. I swear this Affidavit in support of Mastermind GP's and Mastermind LP's Application for relief under the CCAA and for no other or improper purpose.

SWORN REMOTELY by Kristine Spence
in the City of Toronto, in the Province of
Ontario this 22nd day of November, 2023
in accordance with O. Reg. 431/20
Administering Oath or Declaration
Remotely



Commissioner for Taking Affidavits

KRISTINE SPENCE



LUCIO MILANOVICH

TAB B

This is **Exhibit "B"** referred to in the Affidavit of LUCIO MILANOVICH of the City of Toronto, in the Province of Ontario, before me at the City of Toronto in the Province of Ontario, on the 5th day of January, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for taking affidavits
Kristine Spence (LSO #66099S)

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MASTERMIND GP INC.

APPLICANT

**AFFIDAVIT #2 OF LUCIO MILANOVICH
SWORN NOVEMBER 29, 2023**

I, **Lucio Milanovich**, of the City of Toronto, in the Province of Ontario, MAKE
OATH AND SAY:

1. The Applicant is Mastermind GP Inc. ("**Mastermind GP**" or the "**Applicant**"). The sole purpose of Mastermind GP is to act as the general partner of Mastermind LP (together with Mastermind GP, the "**Mastermind Entities**"), which operates retail stores under the "Mastermind Toys" banner. I am the Interim Chief Financial Officer ("**CFO**") of Mastermind LP. I began this position in October 2022. In my capacity as CFO, I oversee the financial activities of Mastermind LP, and my responsibilities include leading the corporate accounting, financial planning and cash management of the business. By virtue of my position as CFO, I have knowledge of the matters deposed to herein. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and, in all such cases, believe it to be true.

2. I swore an affidavit on November 22, 2023 (the “**Initial Affidavit**”) in support of Mastermind GP’s application for an initial order under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985 c. C-36 (the “**CCAA**”). My Initial Affidavit outlined the business operations of Mastermind LP and the financial position of the Mastermind Entities. The factual and financial circumstances related to the Mastermind Entities as set out in my Initial Affidavit are still very much applicable, and I continue to rely on the contents of my Initial Affidavit.

3. The capitalized terms used, but not defined herein, have the meanings ascribed to them in my Initial Affidavit.

4. This Affidavit is made in support of the Applicant’s motion for:

- (a) an order (the “**Liquidation Sale Approval Order**”), *inter alia*, approving the Consulting Agreement and Sale Guidelines (each as defined below) for the liquidation of inventory and furniture, fixtures and equipment (“**FF&E**”) located in certain of Mastermind LP’s stores and other locations, and authorizing and directing the Mastermind Entities to enter into and complete the transactions contemplated by the Consulting Agreement; and
- (b) an Amended and Restated Initial Order (the “**ARIO**”), *inter alia*:
 - (i) extending the stay of proceedings to January 26, 2024 (the “**Stay**”);
 - (ii) extending and increasing the amount of the Administration Charge (as defined below) from \$750,000 to \$1,000,000;
 - (iii) extending and increasing the amount of the D&O Charge (as defined below) from \$4,000,000 to \$5,000,000;

- (iv) approving a forbearance agreement between the Mastermind Entities and the Canadian Imperial Bank of Commerce (“**CIBC**”) and the related relief contemplated therein, including granting a DIP Charge (as defined below) in favour of CIBC up to the maximum amount of \$36,250,000, plus interest, fees and expenses;
- (v) approving a key employee retention plan (the “**KERP**”) for six non-store employees of Mastermind LP and an incentive pool (the “**Incentive Pool**”) for certain in-store managerial employees;
- (vi) granting a KERP charge against the property of the Mastermind Entities (the “**KERP Charge**”) as security for the amounts that may become payable under the KERP, up to the maximum amount of \$286,000;
- (vii) granting a sealing order in relation to the KERP; and
- (viii) approving the following priority of the charges: (a) Administration Charge; (b) D&O Charge; (c) DIP Charge; and (d) KERP Charge.

A. BACKGROUND AND OVERVIEW

5. Mastermind LP is Canada’s largest specialty toy and children’s book retailer operating with 66 locations across the country under the “Mastermind Toys” banner.

6. As described in greater detail in my Initial Affidavit, which is attached as **Exhibit “A”** to my Affidavit (without the exhibits referred to therein), over the past several years, the Mastermind Entities have incurred substantial operating losses as a result of declining sales, dwindling gross margins, increased competition, commoditization of the toy category and other macro-economic trends facing many Canadian retailers. The Mastermind Entities’ financial difficulties were exacerbated by the COVID-19 pandemic,

including as a result of store closures and an increase in shoppers making online purchases. Despite implementing cost reduction and other initiatives to improve profitability, including a months-long out-of-Court sale process, the revenues of the Mastermind Entities continued to decline.

7. As a result, on November 23, 2023 (the “**Filing Date**”), the Mastermind Entities sought protection under the CCAA pursuant to an Initial Order (the “**Initial Order**”). A copy of the Initial Order is attached hereto as **Exhibit “B”** and the endorsement in connection with the Initial Order is attached hereto as **Exhibit “C”**.

8. The Initial Order, among other things: (a) granted a stay of proceedings against the Mastermind Entities until November 30, 2023; (b) appointed Alvarez & Marsal Canada Inc. (“**A&M**”) as monitor within these CCAA proceedings (in such capacity, the “**Monitor**”); (c) granted charges over the assets and property of the Mastermind Entities (i) in favour of the Monitor, counsel to the Monitor and counsel to the Mastermind Entities (the “**Administration Charge**”) in the amount of \$750,000, and (ii) in favour of the officers and directors of the Mastermind Entities (the “**D&O Charge**”) in the amount of \$4,000,000; and (d) set a hearing date of November 30, 2023 for the Comeback Hearing.

9. The principal purpose of these CCAA proceedings is to enable the Mastermind Entities to have the opportunity to pursue a potential sale of some or all of the business on a going concern basis through the CCAA proceeding (the “**Potential Transaction**”) and retain the flexibility to liquidate certain stores operated by Mastermind LP, all with the goal of maximizing recoveries for the stakeholders of the Mastermind Entities. Negotiations in connection with two potential Potential Transactions are ongoing. The

Mastermind Entities hope to be in a position to advise the Court as to whether there is a Potential Transaction at the Comeback Hearing.

10. In the interim, the Mastermind Entities are seeking this Court's approval of the Consulting Agreement and Sale Guidelines to allow Mastermind LP to pursue a liquidation sale in respect of certain of the inventory and FF&E owned by Mastermind LP. The liquidation sale will not prejudice the Mastermind Entities' ability to close either of the Potential Transactions. I understand that the Monitor and the Mastermind Entities' secured creditors, CIBC and the Birch Hill Lenders, support the proposed liquidation sale.

11. The Mastermind Entities are also asking this Court to amend and restate the Initial Order to extend the Stay to January 26, 2024 and provide the Mastermind Entities with the expanded protections and relief they require to complete the liquidation sale, continue negotiations in connection with a Potential Transaction and secure financing that is critically needed to fund operations in the interim.

12. The Mastermind Entities' need for continued protection under the CCAA continues to be acute, and the relief sought under the Liquidation Sale Approval Order and ARIO is essential in order to survive the holiday shopping season, which is the Mastermind Entities' best chance to maximize recoveries for all stakeholders.

B. LIQUIDATION SALE APPROVAL ORDER

(i) The Process for Identifying the Consultant

13. As described in my Initial Affidavit, in the months leading up to the Filing Date, the Mastermind Entities, with the help of Alvarez & Marsal Canada ULC and Alvarez & Marsal Securities ULC (collectively, "**A&M Corporate Finance**"), made various efforts to find a purchaser for their assets on a going concern basis through an out-of-Court sale process. The Mastermind Entities and A&M Corporate Finance were able to structure a transaction

arising from the sale process that would have seen Mastermind LP's business continue as a going concern, but that transaction was subject to mandatory pre-merger notification requirements under the *Competition Act* that ultimately proved too difficult to satisfy in a timely manner.

14. Once it became clear that the transaction could not proceed, the Mastermind Entities began to focus on other alternatives to maximize value for their stakeholders. As described in my Initial Affidavit, historically over one-quarter of Mastermind LP's annual sales are generated during the Holiday Period.¹ Accordingly, prior to the Filing Date, the Mastermind Entities, in consultation with A&M Corporate Finance, began soliciting bids from professional, third party liquidators to liquidate Mastermind LP's store inventory and FF&E.

15. In total, five third party liquidators (the "**Potential Liquidators**") with experience in retail liquidations were solicited and were requested to submit proposals with respect to the proposed liquidation. Each of the Potential Liquidators entered into non-disclosure agreements with the Mastermind Entities and received access to a data room with details relevant to the proposed liquidation sale. The Potential Liquidators engaged in discussions with the Mastermind Entities and A&M Corporate Finance. Additionally, some of the Potential Liquidators opted to visit certain of Mastermind LP's retail stores to gain further insights on the inventory, FF&E and operations that would be subject to the potential liquidation. Ultimately, each of the Potential Liquidators submitted proposals for the liquidation sale. With the assistance of A&M Corporate Finance, the Mastermind

¹ The Holiday Period began in the days leading up to Black Friday (November 24) and will continue through Boxing Day (December 26) (the "**Holiday Period**").

Entities decided to proceed with the offer submitted by Gordon Brothers Canada ULC (the “**Consultant**”).

16. The Consultant has extensive experience in conducting retail store liquidations. The Consultant has led inventory dispositions for a wide variety of current and former retailers, including David’s Bridal and Party City, and has been a part of the syndicates that implemented the liquidations of Bed Bath & Beyond and Nordstrom Canada.

17. The Mastermind Entities considered the Consultant’s offer to be superior based on underlying economics, the Consultant’s prior experience conducting sales of this type, and the Consultant’s familiarity and prior working experience within the toy retail industry.

(ii) The Material Terms of the Consulting Agreement

18. On November 24, 2023, Mastermind LP and the Consultant entered into the consulting agreement (the “**Consulting Agreement**”) attached to my Affidavit as **Exhibit “D”**.

19. The Consulting Agreement contemplates that the Consultant will serve as the exclusive liquidator for the purpose of conducting a sale (the “**Sale**”) of (i) the inventory (the “**Merchandise**”) located in certain retail stores and the distribution centre leased by Mastermind LP (the “**Distribution Centre**”), and (ii) the FF&E located in such retail stores, Mastermind LP’s corporate office (the “**Corporate Office**”) and the Distribution Centre.

20. The Consulting Agreement provides that the Sale will run for approximately an eight-week term (the “**Sale Term**”) commencing no later than December 1, 2023 and ending no later than January 31, 2024 (the “**Sale Termination Date**”) – although the parties currently anticipate that the Sale will end by January 14, 2014. The Sale Term may be varied as agreed to by Mastermind LP and the Consultant, in consultation with the Monitor.

21. Initially, the Mastermind Entities intend to conduct the Sale at the following 18 stores, but have the right under the Consulting Agreement to add stores at any time during the Sale Term (any such stores being the “**Liquidating Stores**”):

#	Store Name
265	Barrie, ON
252	Vaughan, ON
338	Owen Sound, ON
261	Hurontario, ON
342	Ajax, ON
316	Lethbridge, AB
324	Saint John, NB
292	Red Deer, AB
326	Medicine Hat, AB
277	Kingston, ON
297	Cambridge, ON
325	Fredericton, NB
331	Hamilton, ON
327	Sudbury, ON
335	Prince George, BC
332	Sydney, NS
321	Kildonan, MB
290	Windermere Currents, AB

22. If the Mastermind Entities are unable to settle the terms of a Potential Transaction before the date of the Comeback Hearing, they anticipate that they will be expanding the Sale to include all 66 stores as Liquidating Stores in order to maximize recoveries for their stakeholders.

23. The consideration payable to the Consultant under the Consulting Agreement is as follows:

- (a) **Merchandise Fee:** a fee equal to two percent (2.0%) of the gross proceeds (net of sales taxes) including gift cards or gift certificates (net of sales taxes) from sales of Merchandise sold during the Sale Term (the “**Merchandise Fee**”);
- (b) **FF&E Fee:** a commission of 15% of the gross proceeds (net of sales taxes) of the sale of FF&E (the “**FF&E Fee**”); and

- (c) **Special Purpose Payment:** an amount equal to \$475,000 (the “**Special Purpose Payment**”) to compensate the Consultant for any costs incurred if this Court does not approve the Consulting Agreement by December 1, 2023. If the Consulting Agreement is approved by such date, the Consultant will hold the Special Purpose Payment until after the Sale Termination Date and use the funds to offset any amounts owing to the Consultant following the final reconciliation of the amounts payable under the Consulting Agreement. The Consultant will thereafter return the remaining balance of the Special Purpose Payment, if any, to Mastermind LP.

24. A summary of the other key terms of the Consulting Agreement is as follows:

- (a) the Consulting Agreement and the transactions described therein, including the Sale Guidelines, are to be approved by the Court;
- (b) Mastermind LP is responsible for all of the expenses of the Sale as follows:
 - (i) **Merchandise:** all store-level operating expenses and all of the Consultant’s reasonable and documented out-of-pocket expenses in connection with the Sale of Merchandise. However, to control costs, Mastermind LP is not obligated to pay any costs that are not included in an expense budget of up to \$1,775,000 that was established with the Consultant, in consultation with the Monitor (the “**Expense Budget**”). The Expense Budget may only be varied by written agreement of Mastermind LP and the Consultant, with the consent of the Monitor; and
 - (ii) **FF&E:** all of the reasonable and documented costs and expenses incurred by the Consultant in connection with the sale of FF&E pursuant to a written budget (in addition to the Expense Budget), which will be established by mutual agreement of Mastermind LP and the Consultant, with the consent of the Monitor;
- (c) if there is Merchandise remaining following the Sale Termination Date, Mastermind LP has the option to request that the Consultant sell or dispose of any such remaining Merchandise in consultation with the Monitor. The costs and expenses of doing so will be paid by Mastermind LP in accordance with a budget (in addition to the Expense Budget) to be established by the parties. The gross receipts (net of sales taxes) of any sales of the remaining Merchandise will be included in the calculation of the Merchandise Fee; and
- (d) if there is any FF&E owned by Mastermind LP that has not been sold by the Consultant by the Sale Termination Date, such FF&E will not be removed but will be abandoned by the Consultant in a neat and orderly manner; and

- (e) each of Mastermind LP and the Consultant has agreed to indemnify the other for certain matters that arise in connection with the Sale.

25. Under the Consulting Agreement and with Mastermind LP's consent, the Consultant has the right to supplement the Merchandise in the Liquidating Stores with additional goods procured by the Consultant that are of like kind and no lesser quality to the Merchandise in the Liquidating Stores ("**Additional Consultant Goods**"). The Mastermind Entities believe that by allowing the Consultant to sell Additional Consultant Goods during the Sale, creditor recovery will be maximized as traffic to the Liquidating Stores may increase, and Mastermind LP will earn additional revenues through an "Additional Consultant Goods Fee". The Consultant is required to pay Mastermind LP the Additional Consultant Goods Fee in an amount equal to five percent (5%) of the gross proceeds (net of sales taxes) from the sale of any Additional Consultant Goods. The Consultant will retain all remaining amounts from the sale of Additional Consultant Goods.

26. The Consulting Agreement is also subject to the Sale Guidelines attached as Exhibit "B" to the Consulting Agreement. The Sale Guidelines stipulate, among other things, that the Sale will be conducted in accordance with the terms of the leases for the Liquidating Stores, Distribution Centre and Corporate Office (in the case of the sale of FF&E) during each Liquidating Store's normal hours of operation. The Sale Guidelines may be amended on a Liquidating Store-by-Store basis with the consent of the parties and the applicable landlord, in consultation with the Monitor. The Sale Guidelines also contain the following key terms:

- (a) neither the Mastermind Entities nor the Consultant will conduct any auctions of Merchandise or FF&E at the Liquidating Stores;
- (b) the Sale may be advertised as an "Everything on Sale", "Everything Must Go", "Store Closing" or similar themed sale at the Liquidating Store, provided, however, that no signs may advertise the Sale as a "Bankruptcy",

“Liquidation” or “Going out of Business” sale, unless agreed by the Consultant and applicable landlord;

- (c) subject to receiving Mastermind LP’s prior written consent, the Consultant may include the Additional Consultant Goods in the Sale, provided that they are of like kind and category and no lesser quality to the Merchandise;
- (d) the Consultant must make commercially reasonable efforts to arrange walk-throughs with any requesting landlord to identify Mastermind LP’s FF&E that is subject to the Sale;
- (e) at the conclusion of the Sale in each Liquidating Store, the Consultant will leave the store in a “broom-swept” and clean condition; and
- (f) if a dispute arises concerning the conduct of the Sale that cannot be resolved, the applicable landlord or Mastermind LP may schedule a “status hearing” before the Court on no less than two days’ written notice to the other party or parties and the Monitor.

27. In addition, the Consulting Agreement specifically contemplates the possibility of a Potential Transaction and requires the Consultant and the Mastermind Entities to work cooperatively and in good faith to modify the transactions contemplated under the Consulting Agreement if there is a Potential Transaction. For instance if there is a Potential Transaction, the parties will agree on an appropriate allocation of Merchandise from the Distribution Centre to the Liquidating Stores and appropriate advertising to be included on Mastermind LP’s website regarding the Sale.

(iii) The Liquidation Sale Approval Order

28. The proposed Liquidation Sale Approval Order requested by the Mastermind Entities, among other things:

- (a) ratifies the Consulting Agreement, the Sale Guidelines and the transactions contemplated therein and authorizes Mastermind LP, with the assistance of the Consultant, to conduct the Sale in accordance with the Sale Guidelines;

- (b) extends the Stay to the Consultant for the purpose of conducting the Sale and grants certain other protections in favour of the Consultant, including that (i) the Consultant shall not be deemed to be an owner in possession, care, control or management of the Liquidating Stores, Distribution Centre or Corporate Office; (ii) the Consultant shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation; and (iii) Mastermind LP shall bear all responsibility for any liability whatsoever (including without limitation, losses, costs, damages, fines or awards) relating to claims of customers, employees and any other Persons arising from events occurring at the Liquidating Stores during and after the term of the Sale, except to the extent that such claims arise from or relate to matters that the Consultant has indemnified Mastermind LP for pursuant to the Consulting Agreement (the “**Consultant Indemnity**”);
- (c) grants the Consultant access to the Liquidating Stores, the Distribution Centre and the Corporate Office, in accordance with the terms of the applicable leases or other applicable contractual arrangements; and
- (d) authorizes Mastermind LP, with the assistance of the Consultant to market and sell the Merchandise, FF&E and Additional Consultant Goods in accordance with the Sale Guidelines, free and clear of all Claims (as defined in the Liquidation Sale Approval Order), provided that any sale of the FF&E is subject to the requirement to give the applicable landlords advanced notice under the ARIO.

29. I am advised by the Mastermind Entities' counsel at Davies Ward Phillips & Vineberg LLP ("**Davies**") and believe that the form of the Liquidation Sale Approval Order sought in this Motion is substantially the same as sale approval orders granted by the Court in other insolvency proceedings; namely, (a) the Bed Bath & Beyond CCAA proceedings brought by BBB Canada Ltd. (the "**BBB Order**"); and (b) the Nordstrom CCAA proceedings brought by Nordstrom Canada Retail Inc., Nordstrom Canada Holdings LLC and Nordstrom Canada Holdings II LLC (the "**Nordstrom Order**"). Attached to this Affidavit as **Exhibits "E"** and "**F**" are "blackline" documents comparing each of the BBB Order and the Nordstrom Order to the proposed Liquidation Sale Approval Order that the Mastermind Entities are seeking on this Motion.

(iv) Engagement with Landlords

30. Since the Filing Date, the Mastermind Entities have made considerable efforts to engage with landlords (the "**Landlords**") of their 66 retail locations, Corporate Office and the Distribution Centre to apprise them of these CCAA proceedings and the Sale. I am advised by counsel at Davies that after the Initial Order was granted, Davies sent letters to the Landlords that enclosed a copy of the Initial Order, advised the Landlords of the commencement of these CCAA proceedings and directed the Landlords to the Monitor's website to access the Application materials. The Landlords were also invited to file a Notice of Appearance if they wished to participate in these CCAA proceedings. A copy of the letter that was sent to each Landlord is attached to this Affidavit as **Exhibit "G"**. Copies of the distribution lists, setting out the recipients of the letter are attached to this Affidavit as **Exhibit "H"**. I am advised by Davies that any parties represented by counsel or who have filed a Notice of Appearance are included on the Service List.

31. I am also advised by counsel at Davies that in respect of any such letters returned as undeliverable, alternative addresses were sought and the letter was re-sent to the alternative addresses as soon as reasonably practicable. To the extent that any letters or communications continue to be returned as undeliverable, I am advised by Davies that efforts are being made to find current addresses of Landlords in order to provide them with notice of the Initial Order and these CCAA proceedings.

32. On November 27, 2023, Davies sent each of the Landlords and counsel representing certain of the Landlords a letter in the form attached to this Affidavit as **Exhibit "I"**, which enclosed a draft Liquidation Sale Approval Order and the Sale Guidelines appended thereto.

33. The Mastermind Entities, through their counsel, have undertaken discussions with counsel for certain Landlords in respect of the Sale and have made efforts to address any concerns or comments such Landlords may have on the draft Liquidation Sale Approval Order that was circulated. The Mastermind Entities will continue to consult and work cooperatively with each Landlord throughout the entirety of the Sale, and to make commercially reasonable efforts to address any concerns raised by the Landlords to the extent possible.

34. It is my understanding that the Consultant has good relationships with some of the Landlords from prior transactions and is experienced in dealing with the types of landlord concerns that could arise in a liquidation sale.

(v) Support for the Approval of the Liquidation Sale

35. As described above, it is a condition of the Consulting Agreement that the Sale commence by no later than December 1, 2023. The Mastermind Entities believe that the Sale must be commenced as soon as possible to maximize recoveries available to their

respective stakeholders and to limit ongoing operating costs, thereby ensuring that the Mastermind Entities can exit from the applicable Liquidating Stores as soon as practicable. In the circumstances, any delay in commencing the Sale could compromise the net recoveries generated from the sale of the Merchandise and FF&E.

36. The realization process set out in the Consulting Agreement and the Sale Guidelines was designed by the Mastermind Entities and the Consultant, in consultation with the Monitor. Importantly, the Consulting Agreement was designed to be flexible and provides the Mastermind Entities with the ability to continue to pursue a Potential Transaction, or increase the number of Liquidating Stores at any time prior to the Sale Termination Date.

37. Given the process undertaken by the Mastermind Entities and A&M Corporate Finance prior to the Filing Date to select a liquidator, I believe that the Consulting Agreement represents the best available offer for the Merchandise and FF&E of Mastermind LP.

38. I also believe that engaging a professional liquidator to sell the Merchandise and FF&E during the Holiday Period is the best way to maximize the amounts available for the Mastermind Entities stakeholders and will produce better results than an attempt by Mastermind LP to sell such assets on its own.

39. I am advised by the Monitor and verily believe that the Monitor supports the proposed Sale, including the proposed timeline for completion of same, the Consulting Agreement and the Sale Guidelines.

40. Accordingly, the Mastermind Entities respectfully request this Court to approve the Consulting Agreement, the transactions contemplated therein, and the Sale Guidelines.

C. THE AMENDED AND RESTATED INITIAL ORDER

(i) The Extension of the Stay

41. The Initial Order granted a Stay until November 30, 2023. The Mastermind Entities are seeking this Court's approval to extend the Stay until January 26, 2024. The Stay extension is necessary and appropriate in the circumstances so that the Mastermind Entities may continue to have the breathing room necessary to carry out the proposed Sale, which is anticipated to be completed by January 14, 2024 (notwithstanding that the Consulting Agreement provides that the end of the Sale Term will be no later January 31, 2024). In addition, the extension of the Stay will allow for the Mastermind Entities to continue negotiations in connection with a Potential Transaction, which remain ongoing.

42. I am of the view that the Mastermind Entities have acted, and continue to act, in good faith and with due diligence in these CCAA proceedings since the Filing Date. During this time, the Mastermind Entities settled the terms of the Consulting Agreement and significant progress has been made in settling terms of a Potential Transaction. The Mastermind Entities have given notice of these CCAA proceedings to stakeholders including, most significantly, their employees, Landlords, and vendors. The Mastermind Entities have had, and intend to continue, discussions with key stakeholders throughout these CCAA proceedings.

43. The Approved Cash Flow (as defined below) for Mastermind LP is attached to this Affidavit as **Exhibit "J"**.² These projections demonstrate that the Mastermind Entities will have access to sufficient liquidity to fund the operations during the extended Stay period.

² The Approved Cash Flow accounts for funds up to Friday, January 26, 2024. It is dated January 28, 2024 as the Mastermind Entities' accounting practices are calculated on a weekly basis ending on the Sunday of each week.

44. I understand that the Monitor and CIBC support the proposed extension of the Stay.

(ii) Increase to the Administration Charge

45. The Initial Order granted a first priority Administration Charge in the amount of \$750,000. The quantum of the Administration Charge was intended to reflect the fees and disbursements to be incurred by the Mastermind Entities' counsel, the Monitor and the Monitor's counsel up to the date of the Comeback Hearing. The Mastermind Entities now seek to increase the Administration Charge to \$1,000,000.

46. As described in my Initial Affidavit, the ability of the Mastermind Entities to rely on their counsel, the Monitor, and the Monitor's counsel is crucial in these CCAA proceedings as the Mastermind Entities and Consultant implement the Sale, engage with their stakeholders and continue to pursue a Potential Transaction.

47. The Mastermind Entities determined the quantum of the increased Administration Charge in conjunction with the Monitor and believe it to be reasonable.

(iii) Increase to the D&O Charge

48. The Initial Order approved a D&O Charge in the amount of \$4,000,000. As stated in my Initial Affidavit, the quantum of the D&O Charge was limited to those indemnification obligations and liabilities that the Mastermind Entities expected its directors and officers could face up to the Comeback Hearing. The Sale, if approved, will lead to the closure of certain of the Liquidating Stores and the officers and directors of the Mastermind Entities may face increased liabilities related to employee terminations and sales tax remittances.

49. As described in my Initial Affidavit, the AIG Policy (attached as Exhibit R to my Initial Affidavit), Liberty Mutual Policy (attached as **Exhibit "K"** to this Affidavit) and Chubb Policy (attached as **Exhibit "L"** to this Affidavit) have exclusions and contractual

contingencies, which may lead to uncertainty associated with possible coverage. The Mastermind Entities have not been able to obtain adequate supplemental indemnification insurance in respect of these additional potential liabilities at a reasonable cost. As a result, the Mastermind Entities are seeking to increase the quantum of the D&O Charge to \$5,000,000, which amount was determined to be reasonable in conjunction with the Monitor. In my Initial Affidavit, I advised that the Mastermind Entities would be seeking an increase in the D&O Charge from \$4,000,000 to \$7,250,000. The Mastermind Entities ultimately determined, in consultation with the Monitor, to only seek an increase to \$5,000,000. This number was arrived at because, as more particularly described in paragraph 56(e) below, pursuant to the terms of the Forbearance Agreement, Mastermind LP is required to pay or remit HST on at least a bi-weekly basis, which will reduce directors' and officers' potential liabilities in this regard.

(iv) Forbearance Agreement and DIP Charge

50. As described in my Initial Affidavit, Mastermind LP's primary and senior secured creditor is CIBC pursuant to a credit agreement dated October 14, 2014 with Mastermind LP, as borrower, and Mastermind GP, as guarantor (the "**Credit Agreement**"). Under the Credit Agreement, CIBC has committed, among other things: (a) a \$30,000,000 revolving credit facility (the "**Revolving Loan Facility**"); and (b) a Business Credit Availability Program revolving loan in the amount of \$6,250,000 (the "**BCAP Loan**" and together with the Revolving Loan Facility, the "**Credit Facilities**").

51. The Mastermind Entities are indebted to CIBC in the amount of approximately \$11,587,815 under the Revolving Loan Facility as of November 27, 2023. With respect to the BCAP Loan, although I described it as a "BCAP Term Loan" in my Initial Affidavit, it is actually a revolver loan, and it is currently fully drawn in the amount of \$6,250,000.

52. The Mastermind Entities are seeking this Court's approval to enter into a forbearance agreement (the "**Forbearance Agreement**") that sets out the terms upon which CIBC will continue to make the Credit Facilities available to Mastermind LP during these CCAA proceedings. The Forbearance Agreement is attached to my Affidavit as **Exhibit "M"**.

53. Pursuant to the terms of the Forbearance Agreement, CIBC has agreed to allow the Mastermind Entities to borrow under the Credit Facilities in accordance with the terms of the Credit Agreement, including the ongoing use of Mastermind LP's Cash Management System.

54. As described in my Initial Affidavit, Mastermind LP has four bank accounts with CIBC that comprise the Cash Management System: two deposit accounts, which are swept by CIBC daily; and two disbursement accounts, which are funded from the Credit Facilities. Both of the deposit accounts are subject to a blocked accounts agreement in favour of CIBC dated October 24, 2014 (the "**Blocked Accounts Agreement**"), which is attached to my Affidavit as **Exhibit "N"**.

55. It is a condition of the Forbearance Agreement that Mastermind LP will continue its use of the Cash Management System in accordance with the Credit Agreement, including to pay down the balance of the Credit Facilities through the daily sweeping of the Canadian dollar deposit account (in which Mastermind LP's post-filing receipts will be deposited). The Forbearance Agreement expressly provides, however, that any borrowings under the Credit Facilities after the Filing Date shall not be used to pay pre-filing indebtedness under the Credit Facilities.

56. The Forbearance Agreement is also subject to the following key terms and conditions:

- (a) **Fees:** the payment of all fees and expenses payable to CIBC, including a fee in an amount equal to 1.25% of the outstanding balance of the Credit Facilities as of the close of business on the date the ARIO is issued;
- (b) **Approved Cash Flow:** the proceeds of the Credit Facilities may only be used in accordance with the 10-week cash flow forecast for the period of November 23, 2023 to January 28, 2024 that is appended to the this Affidavit as Exhibit “J”³ (the “**Approved Cash Flow**”);
- (c) **Milestones:** the Mastermind Entities are required to achieve certain milestones (the “**Milestones**”) set out in Schedule 4 to the Forbearance Agreement, which schedule may be amended by the Mastermind Entities with the agreement of CIBC, in consultation with the Monitor. The Milestones include (i) obtaining the ARIO and Liquidation Sale Approval Order on or before December 1, 2023, (ii) either, obtaining this Court’s approval of a going concern sale of Mastermind LP’s business, or amending the Consulting Agreement to extend the Sale to all of its Stores, by the week of December 11, 2023, and (iii) completing the Sale on or before January 28, 2024;
- (d) **Terminating Events:** CIBC may terminate the Forbearance Agreement upon the failure of the Mastermind Entities to comply with certain terms and

³ The Approved Cash Flow is also attached as Schedule 5 to the Forbearance Agreement

conditions of the Forbearance Agreement, including failure to comply with the Milestones described above;

- (e) **HST Account:** Mastermind LP and CIBC will establish a deposit account (the “**HST Account**”), pursuant to which Mastermind LP will deposit, on a weekly basis, amounts collected on account of HST. Mastermind LP will remit the HST collected to Canada Revenue Agency on a bi-weekly basis from the HST Account.
- (f) **Amended and Restated Initial Order:** the Mastermind Entities shall obtain the ARIO, which shall:
 - (i) authorize and approve the execution and performance of the Forbearance Agreement by the Mastermind Entities;
 - (ii) provide that CIBC shall be treated as an “unaffected creditor” in these CCAA proceedings;
 - (iii) authorize the Mastermind Entities to use proceeds obtained after the Filing Date (other than borrowings under the Credit Facilities) to pay Mastermind LP’s pre-filing indebtedness under the Credit Facilities (the “**Pre-Filing Payments Order**”);
 - (iv) order that the blocked account arrangements currently in place in respect of the CIBC bank accounts that comprise the Cash Management System and are subject to the Blocked Accounts Agreement will continue throughout these CCAA proceedings;

- (v) require CIBC to provide five days prior notice prior to exercising any rights or remedies against the Mastermind Entities or their property; and
- (vi) grant a priority charge over the assets of the Mastermind Entities in favour of CIBC (described and defined below as the DIP Charge).

57. The Forbearance Agreement requires the Mastermind Entities to grant CIBC a charge (the “**DIP Charge**”) over their assets up to the maximum amount of availability under the Credit Facilities, which is \$36,250,000, plus interest, costs and expenses. The DIP Charge will only secure the amounts that are actually borrowed under the Credit Facilities after the granting of the ARIO.

58. The DIP Charge will rank behind the Administration Charge and the D&O Charge, and rank ahead of the KERP Charge (described below).

59. As described in my Initial Affidavit, the approval of the Forbearance Agreement and continued availability of the Credit Facilities is urgently required. The Mastermind Entities are in default of their obligations under the Credit Agreement and related security, and CIBC has advised the Mastermind Entities that they will exercise their enforcement remedies in the absence of the Forbearance Agreement. Mastermind LP has an upcoming payroll obligation of \$1,000,000 that is due on November 30, 2023, and the rent on all of its stores is due on December 1, 2023. In addition, the Mastermind Entities have ongoing payables to shipping and logistics providers. If the Mastermind Entities do not have the ability to access the Credit Facilities, Mastermind LP will not be able to meet these obligations.

(v) Key Employee Retention Plan and KERP Charge

60. As described in my Initial Affidavit at paragraphs 136 and 137, the Mastermind Entities are seeking approval of a key employee retention plan (“**KERP**”) for certain employees who will be crucial in helping to facilitate the Sale and pursuing a Potential Transaction. The Mastermind Entities are also seeking a charge over their property in the amount of \$286,000 to secure the amounts payable under the KERP (the “**KERP Charge**”). I am advised by the Monitor that it supports both the KERP and the KERP Charge.

61. The KERP contemplates that six head office employees will be paid a retention payment in the aggregate amount of \$285,250. In addition, the Mastermind Entities will establish a separate Incentive Pool in the amount of \$200,000 for certain store-level managerial employees.⁴ There is no overlap between the recipients of the KERP and the intended recipients of the Incentive Pool.

62. The KERP contains highly sensitive, confidential information relating to a select group of Mastermind LP’s employees, including their compensation. For this reason, the Mastermind Entities intend to file the proposed KERP under seal, of which I understand the Monitor is in favour. A copy of the KERP, to be filed under seal, is attached to this Affidavit as **Exhibit “O”**.

63. The Mastermind Entities developed the KERP with the Monitor to provide a one-time lump sum payment to eligible employees as a retention payment to continue their employment throughout these CCAA proceedings. The six employees listed in the KERP have in-depth expertise in the areas of merchandising, logistics, human resources and

⁴ The Approved Cash Flow indicates a total amount of \$485,250, which includes the KERP plus the discretionary Incentive Pool.

information technology, and will play a critical role in operating the business throughout these CCAA proceedings. If these individuals left their positions, then the Mastermind Entities' ability to navigate the Sale and these CCAA proceedings would be compromised.

64. The KERP incentive payments are calculated as a percentage of the employee's base salary, based on the particular individual's level of responsibilities. An explanation for the compensation for each employee is included in the KERP that will be filed under seal. The payments are conditional upon the terms and conditions set out in the KERP award letter to be provided to eligible employees, a form of which is attached to this Affidavit as **Exhibit "P"**.

(vi) Ranking of the Charges

65. The proposed priority ranking of the various charges sought by the Mastermind Entities is as follows:

- (a) the Administration Charge;
- (b) the D&O Charge;
- (c) the DIP Charge; and
- (d) the KERP Charge.

66. The Monitor and CIBC are in support of the proposed ranking.

D. CONCLUSION

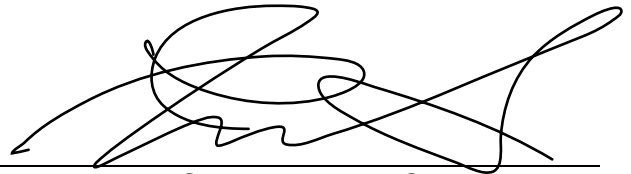
67. For the reasons set out above and as stated in my Initial Affidavit, I continue to believe that the relief requested in this motion is in the best interests of the Mastermind Entities and their stakeholders. Without the requested relief, including the approval of the Sale, Consulting Agreement and Sale Guidelines, the value of the Mastermind Entities' assets are at risk of deteriorating and recovery to their stakeholders will be reduced.

68. I swear this Affidavit in support of the Mastermind Entities' motion for relief under the CCAA and for no other or improper purpose.

**SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario this
29th day of November 2023**



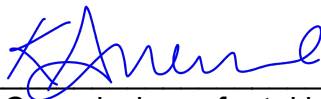
Commissioner for Taking Affidavits
Kristine Spence (LSO #66099S)



LUCIO MILANOVICH

TAB C

This is **Exhibit "C"** referred to in the Affidavit of LUCIO MILANOVICH of the City of Toronto, in the Province of Ontario, before me at the City of Toronto in the Province of Ontario, on the 5th day of January, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for taking affidavits
Kristine Spence (LSO #66099S)

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
MASTERMIND GP INC.**

Applicant

**AFFIDAVIT #3 OF LUCIO MILANOVICH
(SWORN DECEMBER 6, 2023)**

I, Lucio Milanovich, of the City of Toronto, in the Province of Ontario, MAKE OATH
AND SAY:

1. The Applicant, Mastermind GP Inc. ("**Mastermind GP**"), is the general partner of Mastermind LP (together with Mastermind GP, the "**Mastermind Entities**"). Mastermind LP operates retail stores selling children's toys, games and books under the "Mastermind Toys" banner. I am the Interim Chief Financial Officer ("**CFO**") of Mastermind LP. In my capacity as CFO, which role I have held since October 2022, I oversee the financial activities of Mastermind LP and, as such, have knowledge of the matters contained in this Affidavit. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and, in all such cases, believe it to be true.

2. This Affidavit is sworn in support of Mastermind GP's motion for an order (the "**Approval and Vesting Order**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), *inter alia*:

- (a) approving the asset purchase agreement dated as of December 1, 2023 (the “**APA**”) between Mastermind LP, as seller, and Unity Acquisitions Inc., as purchaser (“**Unity**” or the “**Purchaser**”),
- (b) vesting all of Mastermind LP’s right, title and interest in and to the Purchased Assets (as defined below) in the Purchaser; and
- (c) granting a sealing order in relation to the APA to the extent necessary to retain confidentiality over the Purchase Price (as defined below) and related terms as set out therein until further order of the Court.

3. In connection with these CCAA proceedings, I have previously sworn an affidavit dated November 22, 2023 (the “**Initial Affidavit**”) and an affidavit dated November 29, 2023 (the “**Second Affidavit**” and, together with the Initial Affidavit, the “**Previous Affidavits**”). I continue to rely on the details as set out in each of the Previous Affidavits. Where pertinent to the Mastermind Entities’ request for the Approval and Vesting Order, I have repeated certain facts as set out in my Previous Affidavits, each of which is attached (without exhibits) to this Affidavit as **Exhibits “A”** and “**B**”, respectively.

4. Capitalized terms that are not defined herein have the same meaning as ascribed to them in my Previous Affidavits.

A. BACKGROUND & OVERVIEW

5. Mastermind LP is a limited partnership formed under the laws of Ontario and is the operating entity of the “Mastermind Toys” business, Canada’s largest, independent specialty toy and children’s book retailer. Its general partner, Mastermind GP, is an

Ontario corporation that does not have any operations. Its sole purpose is to act as general partner of Mastermind LP.

6. The Mastermind Toys business is operated out of 66 retail stores that are leased by either Mastermind LP or Mastermind GP. In addition, Mastermind LP's headquarters and distribution centre are located at 415-419 Milner Avenue, Toronto, Ontario M1B 1Z9, which is leased by Mastermind LP.

7. The Mastermind Entities are insolvent. As described in greater detail in my Previous Affidavits, the Mastermind Entities have been experiencing a severe liquidity crisis due to a confluence of factors: declining sales revenues, shrinking profit margins, increased competition and commoditization of the toy market. The impact of these factors has been exacerbated by general macro-economic trends facing the Canadian retail sector and the lingering effects of the COVID-19 pandemic. Despite implementing cost reduction and other initiatives to improve its financial position and running a Sale Process (as defined below), Mastermind LP's revenues and profitability continued to decline.

8. As a result, the Mastermind Entities commenced these CCAA proceedings to obtain the protection needed to pursue a potential sale of some or all of Mastermind LP's business as a going concern while retaining the flexibility to liquidate certain of their assets, all with the goal of maximizing recoveries for the their stakeholders.

9. On November 23, 2023 (the "**Filing Date**"), an order (the "**Initial Order**") was made granting the Mastermind Entities protection from their creditors under the CCAA and appointing Alvarez & Marsal Canada Inc. as the Monitor of the Mastermind Entities (the "**Monitor**"). A copy of the Initial Order is attached to this Affidavit as **Exhibit "C"**.

10. On November 30, 2023, this Court granted an amended and restated initial order (the “**ARIO**”) that extended the stay of proceedings in this matter until January 26, 2023, and approved a forbearance agreement dated December 1, 2023 (the “**Forbearance Agreement**”) between the Mastermind Entities and the Canadian Imperial Bank of Commerce (“**CIBC**”). Copies of the ARIO and the Forbearance Agreement are attached to this Affidavit as **Exhibits “D”** and “**E**”, respectively.

11. On the same date, this Court also approved a Liquidation Sale Approval Order that, among other things, authorized Mastermind LP to conduct a liquidation sale (the “**Liquidation Sale**”) pursuant to a consulting agreement dated November 24, 2023 (the “**Consulting Agreement**”) between Mastermind LP and Gordon Brothers Canada ULC. A copy of the Liquidation Sale Approval Order is attached to this Affidavit as **Exhibit “F”**. On December 1, 2023, Mastermind LP commenced the Liquidation Sale at 18 of its stores, as anticipated under the Consulting Agreement.

12. At the time the ARIO and Liquidation Sale Approval Order were granted, the Mastermind Entities were in advanced-stage negotiations with the Purchaser to acquire certain of the business and assets of Mastermind LP as a going concern (the “**Transaction**”), the details of which are more particularly described below. The parties have now entered into a definitive agreement and are seeking this Court’s approval of the APA and Transaction contemplated therein.

13. It is a term of the Forbearance Agreement and the continued availability of Mastermind LP’s credit facilities with CIBC (the “**Credit Facilities**”) that this Court approve the Transaction during the week of December 11, 2023. If the Mastermind

Entities do not obtain the Approval and Vesting Order in the week of December 11, 2023, the Forbearance Agreement requires Mastermind LP to extend the Liquidation Sale to all 66 of its stores. This timing requirement in the Forbearance Agreement is included so that any required liquidation can be undertaken to maximize value from sales that are traditionally higher during the holiday season.

14. The Transaction, as further described herein, will offer various benefits for the Mastermind Entities and their stakeholders. Indeed, the Transaction, if approved, will result in the continuation of at least 40 of Mastermind LP's retail stores, provide continued employment to a substantial number of Mastermind LP's employees, preserve relationships with suppliers and landlords and continue the "Mastermind Toys" business as a going concern. The Transaction, if approved, is therefore expected to produce a better outcome for the Mastermind Entities' stakeholders than the alternative of extending the Liquidation Sale to all of Mastermind LP's stores.

B. THE SALE PROCESS

15. As described in the Previous Affidavits, due to the Mastermind Entities' deteriorating financial condition, they engaged A&M Corporate Finance in March 2023 to review and advise on various strategic alternatives, including a comprehensive out-of-Court sale process (the "**Sale Process**"). The Mastermind Entities chose to work with A&M Corporate Finance because of, among other things, its extensive experience in mergers, acquisitions and refinancing transactions, particularly within the retail industry in Canada.

16. The Mastermind Entities undertook the Sale Process with the goal of finding a potential transaction that would be effected outside of a formal insolvency proceeding. Nonetheless, the Mastermind Entities worked with A&M Corporate Finance to structure the Sale Process using a similar, if not more robust, approach to sale processes typically undertaken within CCAA proceedings.

17. The Mastermind Entities and A&M Corporate Finance designed the Sale Process to encourage potential transactions (a “**Potential Transaction**”) that would, *inter alia*: (i) allow Mastermind LP to continue to operate as a going concern in order to maximize value for its stakeholders; and (ii) preserve as many jobs as possible and limit to the extent possible any disruptions to third party suppliers or customers.

18. As described in my Initial Affidavit, the key dates and milestones relating to the Sale Process were as follows:

Sale Process	Date (2023)	Days (Cumulative)
Phase 1		
Commencement of the Sale Process	April 10	44
Phase 1 due diligence	April 10 to May 24	
Provision of Phase 1 Process Letter	May 1	
Phase 1 LOI bid date	May 24	
Analysis of LOIs and selection of Phase 2 participants	May 25 to 29	
Phase 2		
Phase 2 due diligence	Commenced May 30	75 (119)
Provision of form of APA	June 16	
Withdrawal of remaining Phase 2 Participants	Mid-August	
Execution of Equity Purchase Agreement with the Strategic Purchaser	September 22	

19. As described in detail at paragraphs 89 to 107 of my Initial Affidavit, the Sale Process was extremely robust by design. The goals of the Sale Process were to:

- (a) solicit a widespread group of potential bidders in order to assess whether a Potential Transaction could maximize returns for the Mastermind Entities' stakeholders;
- (b) identify the best Potential Transaction for the business, as measured against objective criteria, including (i) the capital investment that a potential purchaser could provide to the business, and (ii) the total purchase price consideration; and
- (c) ensure that any potential purchaser had the ability to complete a Potential Transaction within the timelines required by the Mastermind Entities and their lenders.

20. Mastermind LP's secured lenders, CIBC and the Birch Hill Lenders¹, were kept fully apprised of the Sale Process as it developed and progressed.

21. Ultimately, the Sale Process was structured in two phases: (i) the first phase ("**Phase 1**") involved identifying and soliciting several potential bidders; and (ii) the second phase ("**Phase 2**") involved a detailed due diligence and negotiation process with a number of bidders who provided signed letters of intent ("**LOIs**").

¹ As described below in paragraph 53, the Birch Hill Lenders have sold the rights under their indebtedness to the Purchaser as of December 1, 2023 with the result that they are not secured lenders of the Mastermind Entities from and after that date.

(i) Phase 1 of the Sale Process

22. On April 10, 2023, Phase 1 commenced with A&M Corporate Finance identifying and soliciting interest from 95 potential bidders throughout Canada, the United States and Europe. A&M Corporate Finance provided each potential bidder with a “teaser” document containing information about Mastermind LP, the Mastermind Toys business and opportunities for a Potential Transaction. A&M Corporate Finance invited solicited bidders that expressed an interest to execute a non-disclosure agreement (“**NDA**”) to obtain more detailed information.

23. Over one-third of the potential bidders executed NDAs and received access to a data room with certain diligence information, including a confidential information memorandum containing details about Mastermind LP’s operations and financial information (including historical financial performance and projections), as well as information relating to the Canadian retail sector.

24. During this period, the Mastermind Entities, along with A&M Corporate Finance and counsel, worked tirelessly with potential bidders to respond to inquiries about Mastermind LP’s operations and to provide interested parties with any information requested to complete the LOIs.

25. On May 24, 2023, four of the potential bidders that executed NDAs submitted Phase 1 non-binding LOIs. Each of the LOIs contemplated an acquisition by the potential purchaser of all or substantially all of Mastermind LP’s business and assets.

26. Ultimately, the Mastermind Entities, along with their advisors, determined that two of the four parties qualified to advance to Phase 2 of the Sale Process because they were

identified as higher value bidders and capable of closing a transaction (the “**Qualified Bidders**”). Management and A&M Corporate Finance recommended the two Qualified Bidders to the Board, which approved their advancement to Phase 2 of the Sale Process.

(ii) Phase 2 of the Sale Process

27. Phase 2 of the Sale Process commenced on May 30, 2023. The Phase 2 participants, *i.e.* the Qualified Bidders, received additional due diligence and engaged in discussions with Mastermind LP’s management and A&M Corporate Finance.

28. During Phase 2, in or around June 2023, the principals of the Purchaser (who had not participated in Phase 1) executed an NDA and gained access to the preliminary data room. Although the principals of the Purchaser conducted some preliminary diligence at that time, they declined to participate in Phase 2. Nonetheless, they expressed an interest in staying close to the Sale Process as it progressed.

29. In the meantime, during the three-month period from June through August 2023, each of the Qualified Bidders engaged in numerous discussions with the Mastermind Entities and A&M Corporate Finance.

30. On July 13, 2023, one of the Qualified Bidders withdrew from the Sale Process, citing concerns over continuing negative sales trends (approximately 25% below the prior year) that would require either an incremental equity investment or the commencement of CCAA proceedings.

31. The Mastermind Entities and A&M Corporate Finance continued discussions with the remaining Qualified Bidder, resulting in a near final form of asset purchase agreement.

Ultimately, however, due to Mastermind LP's worsening liquidity and working capital position, the remaining Qualified Bidder withdrew from the process.

(iii) *The Failed Going Concern Transaction*

32. After both Qualified Bidders withdrew from the Sale Process, A&M Corporate Finance recanvassed the market for a going concern purchaser. At that time, only one party expressed an interest in purchasing Mastermind LP. That party ultimately signed an Equity Purchase Agreement on September 22, 2023 to purchase all equity interests in Mastermind LP and Mastermind GP by an "outside date" of November 24, 2023. The transaction contemplated by the Equity Purchase Agreement was specifically designed to be consummated by the outside date, which coincided with the commencement of Mastermind LP's highest sales volume period – the holiday season.

33. However, as further detailed in paragraphs 99 to 101 of my Initial Affidavit, that transaction was subject to mandatory pre-merger notification requirements under the *Competition Act*, R.S.C. 1985, c. C-34, and when those requirements proved too difficult to satisfy in a timely manner, the Equity Purchase Agreement was terminated as of November 8, 2023.

(iv) *Continuing Efforts to Find a Going Concern Purchaser*

34. After the Equity Purchase Agreement was terminated, the Mastermind Entities were left with limited options, and as described in my Initial Affidavit, were facing significant liquidity pressures. While preparing to commence proceedings under the CCAA, the Mastermind Entities, with A&M Corporate Finance's assistance, continued

their efforts to find a going concern purchaser while simultaneously soliciting potential third party liquidators to conduct a liquidation of a portion of the business.²

35. As part of these efforts, A&M Corporate Finance reached out to certain parties that had previously submitted LOIs during Phase 1 or otherwise expressed an interest in the business during the Sale Process. During this truncated period of time, A&M Corporate Finance re-engaged with approximately 15 parties to determine if they would be interested in acquiring all or portions of the business through the contemplated CCAA proceedings. Of this group, only the principals of the Purchaser and four other parties expressed interest in the opportunity.

36. However, after receiving updated financial information, refreshing their due diligence, gaining a more detailed understanding of the current financial and other circumstances of the business, and engaging in discussions with A&M Corporate Finance, only Unity continued to express a desire to pursue a transaction and had the ability to transact within the accelerated timeline that was afforded to the Mastermind Entities.

(v) Ongoing Negotiations with Unity

37. The Mastermind Entities continued their discussions with Unity, and Unity conducted detailed diligence on Mastermind LP. On November 19, 2023, Unity delivered a non-binding LOI to A&M Corporate Finance, outlining the preliminary terms of a going concern proposal and expressed serious interest in entering into a Potential Transaction

² The process relating to the Liquidation Sale and process to find a third party liquidator is more fully described at paragraphs 13 to 17 of my Second Affidavit.

with the Mastermind Entities. Accordingly, Unity and Mastermind LP, in consultation with A&M Corporate Finance, began negotiating an asset purchase agreement, which negotiations continued following the Filing Date.

38. During the ongoing discussions with Unity, on November 27, 2023, another party submitted an LOI, proposing to purchase the Mastermind Entities' intellectual property and furniture, fixtures and equipment. While this proposal would have enhanced the overall recoveries during a liquidation of the Mastermind Entities' business, it did not provide for a going concern transaction.

39. At all times, the Mastermind Entities kept the Court apprised of the status of the Potential Transaction. On the Filing Date, the Mastermind Entities advised the Court that they had been engaged in ongoing discussions with a potential going concern purchaser. Subsequently, at the Comeback Hearing, the Mastermind Entities advised the Court that they were negotiating an asset purchase agreement, and requested that the Court set a date for a hearing to approve the transaction for December 13, 2023.

40. As further detailed below, on December 1, 2023, Mastermind LP, in consultation with its legal advisors and the Monitor, entered into the APA with Unity. In connection with the execution of the APA, the Purchaser paid a sizeable deposit to the Monitor, to be held in escrow (the "**Deposit**").

41. As more particularly described below, the Transaction is the best option available to the Mastermind Entities and is supported by the Monitor and CIBC. As discussed below, the Purchaser has acquired the outstanding debt and security of Birch Hill. The Sale Process thoroughly canvassed the market for a buyer for Mastermind LP's business

and it is highly unlikely that Mastermind LP will find another party who would be prepared to enter into a more favourable transaction with the Mastermind Entities that is executable in the circumstances. The Transaction is expected to produce a better result for the stakeholders of the Mastermind Entities than the Liquidation Sale and, if approved, will assure a going concern result for most of Mastermind LP's stores.

C. THE TRANSACTION

42. Pursuant to the APA, Mastermind LP has agreed to sell to the Purchaser certain assets associated with at least 40 retail store locations. A copy of the APA is attached to this Affidavit as **Exhibit "G"**, which I understand will be redacted in the public version of the materials filed in support of the Mastermind Entities' motion.

43. The Transaction is scheduled to close on January 15, 2024 (the "**Closing Date**"), with an outside date of January 31, 2024 (the "**Outside Date**"). The Transaction is subject to, among other things, the Court's approval in the form of the Approval and Vesting Order.

44. The key terms and conditions of the APA are summarized below.

(i) Purchased and Excluded Assets

45. The Purchaser will acquire certain of Mastermind LP's assets on an "as is, where is" basis, free and clear of substantially all claims and encumbrances, including the charges ordered by the Court pursuant to the Initial Order and ARIO.³

³ Such encumbrances will be set out in Schedule B to the draft form of Approval and Vesting Order and are defined in section 1.1 of the APA as including the charges ordered by the Court pursuant to the Initial Order and ARIO (*i.e.* the Administration Charge, D&O Charge, DIP Charge and KERP

46. Specifically, the Purchaser will acquire all of Mastermind LP's right, title and interest in the property and assets described in section 2.1 of the APA (the "**Purchased Assets**"). The Purchased Assets under the APA include, among other things, the following:

- (a) **Purchased Stores**: subject to sections 2.4⁴ and 2.5⁵ of the APA, the rights of Mastermind LP under leases and other agreements in respect of at least 40 of Mastermind LP's retail locations (the "**Purchased Stores**");
- (b) **Inventory**: all unsold inventory located at the Purchased Stores;
- (c) **FF&E**: fixtures, furniture and equipment located at the Purchased Stores;
- (d) **Prepaid Expenses**: all deposits and prepaid expenses related to the Purchased Assets or the Purchased Stores;
- (e) **Tax Refunds**: all GST/HST or other sales tax refund amounts accruing to Mastermind LP prior to the Closing Date;
- (f) **Assumed Contracts**: subject to section 2.4⁶ of the APA, certain contracts needed to operate the Mastermind Toys business (the "**Assumed Contracts**", as described in Schedule 2.1(h) to the APA), which may be adjusted prior to the Closing Date to include additional Assumed Contracts with Mastermind LP's consent;
- (g) **Books and records**: books and records relating to the Mastermind Toys business or the Purchased Stores, including financial, corporate and operational records, purchase and sales books and records, lists of suppliers and customers and projections;
- (h) **Petty cash**: all petty cash physically located in the Purchased Stores;

Charge) and any charges or security interests registered under any personal property registry systems.

⁴ Section 2.4 of the APA provides, *inter alia*, that the Purchaser will not assume, among other things, any leases that require a third party consent in order to be assigned unless such third party consent or an assignment order under the CCAA has been obtained.

⁵ Section 2.5 of the APA provides the Purchaser with certain rights to add or remove locations to the Purchased Stores list as described more fully below in paragraph 47.

⁶ See *supra*, note 4.

- (i) **Accounts Receivable**: all accounts receivable, trade accounts, notes receivable, book debts and other debts due or accruing due to Mastermind LP and related to the Mastermind Toys business;
- (j) **Rights under Insurance**: all claims Mastermind LP may have for insurance coverage under any past or present insurance policies insuring the Purchased Assets, the Purchased Stores or the Mastermind Toys business, subject to certain exceptions;
- (k) **Goodwill**: all goodwill related to the Purchased Assets and the Mastermind Toys business;
- (l) **Intellectual Property & Business and Domain Names**: all intellectual property used or held for use in the “Mastermind Toys” business, including registered trademarks, and all trade names, business names and domain names; and
- (m) **Information Systems**: all information systems owned by Mastermind LP and used in the Mastermind Toys business at the Purchased Locations.

47. Section 2.5 of the APA allows Unity to remove Purchased Stores or add the lease for Mastermind LP’s headquarters and distribution centre in accordance with certain timelines as set out in the APA. Any Purchased Store that is removed from the list of Purchased Assets is referred to as a “Non-Purchased Location” under the APA. The Purchaser may also exclude certain specified stores from the final list of Purchased Stores in accordance with certain timelines as set out in the APA, provided that Unity is required to acquire at least 40 store locations, together with the associated Purchased Assets.

48. As previously described to the Court, the Mastermind Entities retained flexibility in the Consulting Agreement to allow them to add stores to the Liquidation Sale. Accordingly, any stores that are removed from the list of the Purchased Stores and designated as Non-Purchased Locations can be liquidated in the Liquidation Sale in accordance with the Consulting Agreement.

49. Although it is currently unknown whether the Purchaser will make adjustments to the Purchased Stores, the Mastermind Entities intend to advise the landlords of each of those locations if they are so affected and will advise the Court of any updates to the Purchased Stores prior to or at the hearing of this motion.

50. The Purchaser is not acquiring any “Excluded Assets”. The Excluded Assets are enumerated in section 2.2 of the APA and include, among other things, the following:

- (a) **Cash**: Mastermind LP’s cash (excluding petty cash at the Purchased Stores), cash equivalents and marketable securities;
- (b) **Excluded Inventory**: merchandise located at, in transit to or allocated to a Non-Purchased Location;
- (c) **Insurance Policies**: all insurance policies and insurance contracts insuring the Purchased Assets or the Mastermind Toys business and related business activities undertaken by Mastermind LP under the “Mastermind” banner;
- (d) **Excluded Insurance Claims**: any claims relating to director’s and officer’s insurance policies, or claims relating solely to the “Retained Liabilities”⁷ or to the Excluded Assets;
- (e) **Equity Interests**: any equity interests in any other person;
- (f) **Income Tax**: any income tax instalments paid by Mastermind LP and the right to a refund of income taxes;
- (g) **Rights relating to Mastermind LP’s Secured Obligations**: the rights of Mastermind LP under (i) its Credit Agreement with CIBC; and (ii) under the Birch Hill Notes (as defined and described below);
- (h) **Unassignable Contracts**: any contract, lease, intellectual property or authorization that is not assignable without a third party consent, unless a

⁷

Section 2.3(c) of the APA provides a definition for “**Retained Liabilities**”: “All Liabilities of Seller that are described in Section 2.3(b), and all other Liabilities of Seller, whether or not incurred in connection with the Business, that are not specifically listed as Assumed Liabilities in Section 2.3(a) are to be retained by Seller and are referred to as the “Retained Liabilities”.”

third party consent or Assignment Order (as defined below) pursuant to the CCAA is obtained;

- (i) **Excluded Assets**: any other assets, property and contracts identified in Schedule 2.2(l)⁸ to the APA, provided that the Purchaser may add assets, property and contracts in accordance with certain timelines as set out in the APA; and
- (j) **Records**: personnel records that Mastermind LP is required at law to retain, minute books, share registers, tax records, and all materials subject to solicitor-client privilege, including those related to the Transaction.

(ii) The Purchase Price

51. The purchase price payable under the APA (the “**Purchase Price**”) is highly confidential and is based on a complicated formula to ensure that, in all scenarios, the secured creditors are repaid in full and that there is sufficient cash available to pay all Priority Payables.⁹ The specific Purchase Price mechanics have been redacted from the APA attached as Exhibit G to this Affidavit and are subject of a sealing order request, as further detailed below.

⁸ Currently, the only agreements listed are Mastermind LP’s Long Term Incentive Plan and Stock Option Plan.

⁹ Under section 1.1 of the APA, “Priority Payables” means: “(a) those priority payments prescribed under subsections 6(5) and 6(6) of the CCAA; (b) any amount owing Mastermind LP for unpaid wages (excluding termination pay or severance pay) to an Employee or former employee of Mastermind LP accrued between the Filing Date and the Closing Date; (c) any amount owing by Seller for accrued vacation pay to an Employee or former employee of Seller as of the Time of Closing, (d) any unremitted Payroll Source Deductions; (d) all obligations of Seller incurred with the consent of the Monitor between the Filing Date and the Closing Date, other than termination pay or severance pay owing to Employees or former employees of Seller; (e) any amount owing by Seller in respect of obligations secured by the Court Ordered Charges (without duplication to amounts otherwise satisfied above); and (f) all Liabilities of Seller in respect of portions of the Discretionary Bonus Pool that have been awarded but not paid to Employees or former employees of Seller as of the Time of Closing.”

(iii) The Birch Hill Notes

52. As detailed in paragraphs 61 to 62 of my Initial Affidavit, Mastermind LP issued grid promissory notes (the “**Birch Hill Notes**”) on a secured basis in favour of the Birch Hill Lenders.¹⁰

53. On December 1, 2023, the Birch Hill Lenders assigned their interests in the Birch Hill Notes to Unity pursuant to an Assignment Agreement (the “**Assignment Agreement**”), along with their rights and interests in the underlying security in respect of the Birch Hill Notes. A portion of the Purchase Price will be used to reduce the obligations owing by Mastermind LP under the Birch Hill Notes on the Closing Date, and any excess amounts following repayment of CIBC and the Priority Payables will be allocated to the unsecured creditors. As a result of the Assignment Agreement, Mastermind LP is no longer indebted to the Birch Hill Lenders and is indebted to Unity instead.

(iv) Employee-Related Matters

54. Section 4.1 of the APA requires the Purchaser to retain a number of Mastermind LP employees equal to at least 85% of those working at the Purchased Stores. The Purchaser is required to deliver a final retention list (the “**Retention List**”) in accordance with certain timelines as set out in the APA, identifying the employees to whom it will make offers of employment.

55. The Purchaser will offer employment to all active employees on its Retention List at least five days prior to the Closing Date on terms and conditions of employment that

¹⁰ As defined in my First Affidavit, the Birch Hill Lenders are, collectively, Birch Hill Equity Partners (Entrepreneurs) IV, LP, Birch Hill Equity Partners IV, LP and Birch Hill Equity Partners (US) IV, LP.

are substantially similar to those in effect immediately prior to the Closing Date (including recognizing any such employees' prior accumulated service) (those employees who accept the Purchaser's offer of employment being the "**Transferred Employees**"). The Purchaser has agreed to assume all liabilities of Mastermind LP relating to the Transferred Employees, accrued from and after the Closing Date.

56. The APA provides that Mastermind LP may, at any time prior to the Closing Date, make payments under the KERP and Incentive Pool that were approved by the Court pursuant to the ARIO.¹¹ As noted in my Second Affidavit, the purpose of the Incentive Pool is to award and incentivize store-level managerial employees at the Liquidating Stores to assist with the Liquidation Sale.

(v) Closing Conditions and Covenants

57. The closing of the Transaction is subject to customary closing conditions including an issued Approval and Vesting Order approving the APA and the Transaction and vesting the Purchased Assets in Unity free and clear of all claims and Encumbrances,¹² (except for the Permitted Encumbrances¹³).

58. The other key closing condition requires Mastermind LP to have obtained consents to the assignment of, or an order under section 11.3 of the CCAA (the "**Assignment**

¹¹ The KERP and the Incentive Pool are more fully described in paragraphs 60 to 64 of my Second Affidavit. The Incentive Pool approved by the Court is referred to as a "Discretionary Bonus Pool" under the APA, which is a certain amount "per Non-Purchased Location that Seller may offer to store-level managerial Employees as compensation for assisting with and facilitating the sale or liquidation of all or substantially all of the assets of the Non-Purchased Locations of Seller"

¹² As set out in Schedule B to the Approval and Vesting Order.

¹³ As set out in Schedule C to the Approval and Vesting Order.

Order") assigning a certain number of the leases in respect of the Purchased Stores to the Purchaser (each, an "**Assumed Lease**").

59. The Mastermind Entities are not seeking the Assignment Order as part of this motion. I understand from the Purchaser that it is in the process of contacting counterparties under the Assumed Contracts and Assumed Leases to obtain their consent to an assignment to Unity. If the Purchaser is unsuccessful in these efforts, the Mastermind Entities will bring a motion for the Assignment Order prior to the Closing Date and on notice to all of the affected parties.

60. The APA contemplates that Mastermind LP and Unity will provide certain transition services to one another to assist with the transition of the Mastermind Toys business and the administration of these CCAA proceedings. These services include administrative and back-office support to prepare payroll and tax forms, facilitating payment of the Priority Payables, completing any claims process, assisting with communications with internal and external stakeholders and transition of bank accounts and receivables. The APA contemplates that the parties shall use commercially reasonable efforts to enter into a standalone transition services agreement if requested by one of the parties.

61. If the parties enter into a transition services agreement, Mastermind LP will obtain an Order of this Court (the "**Ancillary Order**") seeking certain ancillary relief including approval of a transition services agreement. The Ancillary Order (which is not being sought as a part of this motion) will authorize the Mastermind Entities to enter into such an agreement and other arrangements with the Purchaser and to perform its obligations thereunder.

62. Mastermind LP has agreed that upon the closing of the Transaction the Mastermind Entities shall change their legal names in order to avoid confusion with the Mastermind entities that will continue to be operated by the Purchaser following closing. Accordingly, the Mastermind Entities are also seeking to amend the style of cause for the CCAA proceedings to reflect the name change pursuant to the Approval and Vesting Order.

D. THE REQUESTED RELIEF

(i) Approval of the APA and the Transaction

63. The Mastermind Entities believe that the Transaction is the most favourable option available in the circumstances for maximizing value for their stakeholders.

64. After a thorough Sale Process, where nearly 100 potential bidders were solicited and a number of Potential Transactions were negotiated but could not ultimately proceed, the Transaction represents the only viable going concern transaction available. I believe that the Transaction will result in an outcome for the Mastermind Entities' stakeholders that is far better than would have been achieved in a sale of Mastermind LP's assets in a bankruptcy or liquidation (including the Liquidation Sale). The Transaction will preserve jobs and supplier relationships, maintain leases and limit business disruption.

65. In addition, the Transaction is also favourable because of the Purchaser's track record of success in the retail industry, which positions the Mastermind Toys business for success under its stewardship. Each of the owners of Unity, Messrs. Mimran, Rochetti and Lui, have founded or acquired a number of companies in the past, including Club

Monaco, Joe Fresh, the Alfred Sung Brand, Caban, Pink Tartan, Cultural Goods Gallery, Kit and Ace, and Casca Footwear.

66. Unity and its owners have also demonstrated their commitment to closing the Transaction and worked with Mastermind LP to structure the Transaction with minimal closing risk, including as follows:

- (a) the Purchaser has provided the Deposit to the Monitor in a sizeable amount, and it is only refundable in limited circumstances;
- (b) the Transaction is not conditional upon financing or any regulatory or other government approvals; and
- (c) each of Messrs. Mimran, Rochetti and Lui has personally guaranteed a portion of Mastermind LP's indebtedness under the Credit Facilities to provide comfort to all parties that they are committed to closing the transaction (the "**Buyer Guarantee**"). Under the Buyer Guarantee, Messrs. Mimran, Rochetti and Lui, each as Guarantor, have agreed to indemnify and save harmless CIBC from any losses resulting from Mastermind LP's failure to pay the outstanding liabilities to CIBC on a joint and several basis. Each Guarantor has guaranteed a significant portion of Mastermind LP's debt obligations to CIBC.

67. It is crucial that the APA and the Transaction contemplated therein be approved imminently. As described above, the Forbearance Agreement requires the Mastermind Entities to obtain approval of the Transaction during the week of December 11, 2023,

otherwise the Mastermind Entities are required to expand the Liquidation Sale to all 66 locations across the country.

68. I am advised by the Monitor that it supports the Mastermind Entities' request for approval of the APA. I am also advised that CIBC was consulted in respect of the Transaction and has expressed its support for the relief the Mastermind Entities are seeking on this Motion.

(ii) Sealing of the APA

69. The Mastermind Entities are seeking the sealing of the APA only as it relates to the Purchase Price, and related terms, set out therein.¹⁴ I am advised by the Monitor that it is in support of the sealing of the Purchase Price and related information. I also understand that Unity is in support of such relief, as further detailed below.

70. The information related to the Purchase Price is commercially sensitive and is also subject to change. The Purchase Price and mechanisms to determine it are unique and have resulted from a significant amount of time and money invested in developing them. I understand that Unity and its principals, who often make investments in retail businesses, consider these mechanisms to be proprietary and competitively sensitive.

E. ANTICIPATED FUTURE RELIEF

71. The APA may give rise to the need for the Mastermind Entities to seek additional relief in order to ensure that the Transaction closes, including the Assignment Order and

¹⁴ This includes any information related to the calculation of the Purchase Price, including adjustments to be made to the Purchase Price, as well as Exhibit B to the APA, which is an "Illustrative Net Debt Statement".

the Ancillary Order (each, as described above), and, potentially, an extension of the Stay Period (as defined below).

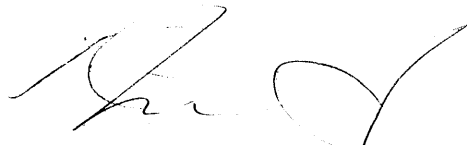
72. Under the ARIO, the Court granted an extension of the stay period to January 26, 2024 (the “**Stay Period**”). Although the Transaction is expected to close on January 15, 2024, the APA provides for an Outside Date of January 31, 2024. In addition and as detailed in my Second Affidavit, although the Mastermind Entities expect the Liquidation Sale to be completed by January 14, 2024, the Consulting Agreement contemplates that the Liquidation Sale will end on January 31, 2024. For all of these reasons, the Mastermind Entities expect to return to the Court to request an Order extending the Stay Period.

SWORN remotely by at the City of Toronto, in the Province of Ontario, before me on the 6th day of December, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits
(or as may be)

KRISTINE SPENCE



(Signature of deponent)
Lucio Milanovich

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**AFFIDAVIT #3 OF LUCIO MILANOVICH
(SWORN DECEMBER 6, 2023)**

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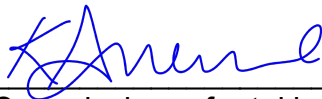
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Lawyers for the Applicant, Mastermind GP Inc.

TAB D

This is **Exhibit "D"** referred to in the Affidavit of LUCIO MILANOVICH of the City of Toronto, in the Province of Ontario, before me at the City of Toronto in the Province of Ontario, on the 5th day of January, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for taking affidavits
Kristine Spence (LSO #66099S)

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE) THURSDAY, THE 23RD DAY
)
JUSTICE STEELE) OF NOVEMBER, 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 MASTERMIND GP INC.

(the "**Applicant**")

INITIAL ORDER

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

ON READING the affidavit of Lucio Milanovich sworn on November 22, 2023 (the "**Milanovich Affidavit**") and the Exhibits thereto, the pre-filing report of Alvarez & Marsal Canada Inc. ("**A&M**") as the proposed monitor dated November 22, 2023 (the "**Pre-Filing Report**"), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicant and Mastermind LP (collectively, the "**Mastermind Entities**"), counsel for A&M, and counsel for Canadian Imperial Bank of Commerce, in its capacity as administrative agent for the lenders under the Credit Agreement (in such capacity, the "**Agent**"), and on reading the consent of A&M to act as the Court-appointed monitor of the Mastermind Entities in these CCAA proceedings (in such capacity, the "**Monitor**");

SERVICE AND DEFINITIONS

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 service thereof.

2. **THIS COURT ORDERS** that capitalized terms used but not defined in this Order shall have the meanings given to them in the Milanovich Affidavit.

APPLICATION

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

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the Mastermind 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, the Mastermind Entities shall continue to carry on business in a manner consistent with the preservation of their business (the “**Business**”) and Property. Each of the Mastermind Entities is authorized and empowered to continue to retain and employ its employees, consultants, contractors, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by it, with liberty to retain such further Assistants as it deems 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 Mastermind Entities shall be entitled, subject to the terms of the Credit Agreement, to continue to utilize the central cash management system currently in place as described in the Milanovich Affidavit or, with the prior consent of the Monitor and the Agent, 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**”), including the Agent, 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 Mastermind 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 Mastermind 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 in any plan of arrangement or compromise under the CCAA with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. **THIS COURT ORDERS** that in accordance with the Approved Cash Flow, the Mastermind 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 employee expenses payable 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) up until December 24, 2023, all amounts relating to honouring gift cards issued before the date of this Order, subject to further Order of this Court;
- (c) the fees and disbursements of any Assistants retained or employed by any of the Mastermind Entities in respect of these proceedings, at their standard rates and charges; and
- (d) with the consent of the Monitor, amounts owing for goods or services actually supplied to the Mastermind Entities prior to the date of this Order by (i) providers of credit, debit and gift card processing related services; (ii) logistics, warehouse or supply chain providers, such as transportation providers, customs brokers and freight forwarders, (iii) providers of information, internet and other technology, including ecommerce providers and related services, and (iv) other suppliers or service providers if, in the opinion of the Mastermind Entities, following consultation with the Monitor, such payment is necessary to maintain the uninterrupted operations of the Business.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein the Mastermind Entities shall be entitled but not required to pay all reasonable expenses incurred by the Mastermind Entities in carrying on the Business in the ordinary course after this Order in accordance with the Approved Cash Flow, 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), IT services, data services, maintenance and security services; and
- (b) payment for goods or services actually supplied to the Mastermind Entities following the date of this Order.

8. **THIS COURT ORDERS** that the Mastermind Entities shall, in accordance with legal requirements, remit 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 taxes, harmonized sales taxes, or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Mastermind Entities in connection with the sale of goods and services by the Mastermind 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; and

- (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 the Mastermind Entities.

9. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Mastermind 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 Mastermind Entities, the making of this Order or the commencement of any insolvency proceedings) or as otherwise may be negotiated between the applicable Mastermind 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) in the amounts set out in the applicable lease or, with the consent of the Monitor, at such other intervals and dates as may be agreed to between the applicable Mastermind Entity and landlord. 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 Mastermind 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 Mastermind Entities to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business. Notwithstanding the foregoing, the Mastermind Entities shall be entitled to continue to operate the Cash Management System, including the blocked account arrangements, in accordance with the Credit Agreement and as described in the Milanovich Affidavit.

RESTRUCTURING

11. **THIS COURT ORDERS** that the Mastermind 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 \$25,000 in any one transaction or \$50,000 in the aggregate;
- (b) sell inventory in the ordinary course of business consistent with past practice, or otherwise with the consent of the Monitor and the Agent;
- (c) terminate the employment of their employees or temporarily lay off such of their employees as they deem appropriate;

- (d) refuse to honour any existing return policies, refunds, discounts or other similar customer programs or obligations; and
- (e) pursue all avenues of financing, restructuring, sale or reorganizing the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing, restructuring, sale or reorganizing,

all of the foregoing to permit the Mastermind Entities to proceed with an orderly restructuring of the Mastermind Entities or the Business (the “**Restructuring**”).

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

NO PROCEEDINGS AGAINST THE MASTERMIND ENTITIES OR THE PROPERTY

14. **THIS COURT ORDERS** that until and including November 30, 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 Mastermind Entities or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the written consent of the Mastermind Entities and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of any of the Mastermind Entities 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 Mastermind Entities and the Monitor.

NO EXERCISE OF RIGHTS OR REMEDIES

15. **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 any of the Mastermind 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 Mastermind Entities and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Mastermind Entities to carry on any business which the Mastermind 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

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

CONTINUATION OF SERVICES

17. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements or arrangements with any of the Mastermind Entities 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, logistics services, transportation services, customs clearing and importing services, warehouse services, security services, management services, merchandise or procurement sourcing services, utility or other services to the Business or any of the Mastermind Entities, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply or license of such goods or services as may be required by any of the Mastermind Entities, and that the Mastermind 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 Mastermind Entities in accordance with normal payment practices of the applicable Mastermind Entity or such other practices as may be agreed upon by the supplier or service provider and the applicable Mastermind Entity and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. **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 Mastermind Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

NO PRE-FILING VERSUS POST-FILING SET-OFF

19. **THIS COURT ORDERS** that no Person shall be entitled to set off any amounts that (a) are or may become due to any Mastermind Entity in respect of obligations arising prior to the date hereof with any amounts that are or may become due from such Mastermind Entity in respect of obligations arising on or after the date of this Order, or (b) are or may become due from any Mastermind Entity in respect of obligations arising prior to the date hereof with any amounts that are or may become due to such Mastermind Entity in respect of obligations arising on or after the date of this Order, each without the consent of the Mastermind Entities and the Monitor or further Order of this Court.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

20. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Mastermind 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 Mastermind 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 Mastermind Entities, if one is filed, is sanctioned by this Court or is refused by the creditors of the Mastermind Entities or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

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

22. **THIS COURT ORDERS** that the directors and officers of each of the Mastermind 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 \$4,000,000, unless permitted by further Order of this Court, as security for the indemnity provided in paragraph 21 of this Order. The Directors' Charge shall have the priority set out in paragraphs 33 and 35 herein.

23. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Mastermind Entities' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 21 of this Order.

APPOINTMENT OF MONITOR

24. **THIS COURT ORDERS** that A&M is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Mastermind Entities with the powers and obligations set out in the CCAA or set forth herein and that the Mastermind Entities and their respective shareholders or partners (as applicable), officers, directors, and Assistants shall advise the Monitor of all material steps taken by any of the Mastermind 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.

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

- (a) monitor the Mastermind Entities' receipts and disbursements;
- (b) 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, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Mastermind Entities, to the extent required by the Mastermind Entities, in continuing negotiations with any Person in an effort to pursue the Restructuring;
- (d) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Mastermind Entities, wherever located and to the extent

that is necessary to adequately assess the Mastermind Entities' business and financial affairs or to perform its duties arising under this Order;

- (e) 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
- (f) perform such other duties as are required by this Order or by this Court from time to time.

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

27. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act, 1999*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the

“Environmental Legislation”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

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

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

30. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Mastermind Entities, shall be paid their reasonable fees and disbursements, in each

case at their standard rates and charges, whether incurred prior to, on or after the date of this Order, by the Mastermind Entities as part of the costs of these proceedings. The Mastermind Entities are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Mastermind Entities on a weekly basis or as otherwise agreed among the parties.

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

32. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Mastermind 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 \$750,000, unless permitted by further Order of this Court, as security for their professional fees and disbursements incurred at their standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 33 and 35 herein.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

33. **THIS COURT ORDERS** that the priorities of the Directors’ Charge and the Administration Charge (collectively, the “**Charges**”), as among them, shall be as follows:

First - Administration Charge (to the maximum amount of \$750,000); and

Second - Directors’ Charge (to the maximum amount of \$4,000,000).

34. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

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

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

37. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the

Charges (collectively, the “**Chargees**”) 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 Mastermind 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 Mastermind 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 Mastermind Entities pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

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

SERVICE AND NOTICE

39. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in *The Globe and Mail* (National Edition) a notice containing the information prescribed under the CCAA, and (ii) within five 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 Mastermind Entities, a notice to every known creditor who has a claim against any of the Mastermind Entities of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Subsection 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of the individuals who are creditors publicly available.

40. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/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 Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL: <https://www.alvarezandmarsal.com/Mastermind>.

41. **THIS COURT ORDERS** that if the service, distribution or notice of documents in accordance with the Guide or the CCAA and the regulations thereunder is not practicable, the Mastermind 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 Mastermind Entities' creditors or other interested parties at their respective addresses (including e-mail addresses) as last shown in the books and records of the Mastermind 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 Time), (b) the next business day following the date of forwarding thereof, if sent by courier, personal delivery, facsimile transition or electronic message sent after 5:00 p.m. (Eastern Time), or (c) on the business day following the date of forwarding thereof, if sent by ordinary mail.

42. **THIS COURT ORDERS** that the Mastermind 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 copies thereof by electronic message (including by e-mail) to the Mastermind Entities' creditors or other interested parties and their advisors, as applicable. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations* (SOR/2013-221).

COMEBACK DATE

43. **THIS COURT ORDERS** that the comeback motion shall be heard by a Commercial List Judge at 10:00 a.m. on November 30, 2023 (the “**Comeback Date**”).

GENERAL

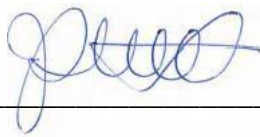
44. **THIS COURT ORDERS** that each of the Mastermind Entities or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their respective powers and duties hereunder or in the interpretation of this Order.

45. **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 Mastermind Entities, the Business or the Property.

46. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Mastermind Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Mastermind Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Mastermind Entities and the Monitor and their respective agents in carrying out the terms of this Order.

47. **THIS COURT ORDERS** that each of the Mastermind Entities and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

48. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Eastern Time) on the date of this Order without the need for entry or filing.



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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MASTERMIND GP INC

Court File No. CV-23-00710259-00CL

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

Proceeding commenced at Toronto

INITIAL ORDER

DAVIES WARD PHILLIPS & VINEBERG LLP
155 Wellington Street West
Toronto ON M5V 3J7

Natasha MacParland (LSO#42383G)
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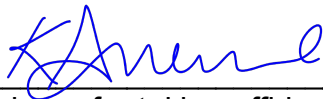
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Lawyers for the Applicant, Mastermind GP Inc.

TAB E

This is **Exhibit "E"** referred to in the Affidavit of LUCIO MILANOVICH of the City of Toronto, in the Province of Ontario, before me at the City of Toronto in the Province of Ontario, on the 5th day of January, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for taking affidavits
Kristine Spence (LSO #66099S)



Court File No. CV-23-00710259-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) THURSDAY, THE 30th DAY
JUSTICE STEELE) OF NOVEMBER, 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 MASTERMIND GP INC.

(the "**Applicant**")

**AMENDED AND RESTATED INITIAL ORDER
(amending the Initial Order dated November 23, 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 by videoconference.

ON READING the affidavit of Lucio Milanovich sworn on November 22, 2023 (the "**Milanovich Affidavit**") and the Exhibits thereto, the affidavit of Lucio Milanovich sworn on November 29, 2023 and the Exhibits thereto (the "**Second Milanovich Affidavit**" and together with the Milanovich Affidavit, the "**Milanovich Affidavits**"), the Pre-Filing Report of Alvarez & Marsal Canada Inc. ("**A&M**") as the proposed monitor dated November 22, 2023 (the "**Pre-Filing Report**"), and the First Report of A&M in its capacity as Court-appointed monitor (in such capacity, the "**Monitor**"), and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicant and Mastermind LP (collectively, the "**Mastermind Entities**"), counsel for the Monitor, and counsel for Canadian Imperial Bank of Commerce, in its capacity as administrative

agent for the lenders under the Credit Agreement (in such capacity, the “**Agent**”), and on reading the consent of A&M to act as the Monitor:

SERVICE AND DEFINITIONS

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.

2. **THIS COURT ORDERS** that capitalized terms used but not defined in this Order shall have the meanings given to them in the Milanovich Affidavit or the Second Milanovich Affidavit, as applicable.

APPLICATION

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

PLAN OF ARRANGEMENT

4. **THIS COURT ORDERS** the Mastermind Entities shall have the authority to file and may, subject to further order of this Court, file with this Court one or more plans of compromise or arrangement (hereinafter referred to as the “**Plan**”).

POSSESSION OF PROPERTY AND OPERATIONS

5. **THIS COURT ORDERS** that the Mastermind 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, the

Mastermind Entities shall continue to carry on business in a manner consistent with the preservation of their business (the “**Business**”) and Property. Each of the Mastermind Entities is authorized and empowered to continue to retain and employ its employees, consultants, contractors, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

6. **THIS COURT ORDERS** that the Mastermind Entities shall be entitled, subject to the terms of the Credit Agreement and the Forbearance Agreement and paragraph 39 of this Order, to continue to utilize the central cash management system currently in place as described in the Milanovich Affidavits or, with the prior consent of the Monitor and the Agent, 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, including the Agent, 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 Mastermind 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 defined below) other than the Mastermind 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 the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

7. **THIS COURT ORDERS** that in accordance with the Forbearance Agreement and Approved Cash Flow, the Mastermind Entities shall be entitled but not required to pay the following expenses whether incurred prior to, on or after November 23, 2023 (the **“Filing Date”**):

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and employee expenses payable on or after the Filing Date, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) up until December 24, 2023, all amounts relating to honouring gift cards issued before the Filing Date, subject to further Order of this Court;
- (c) the fees and disbursements of any Assistants retained or employed by any of the Mastermind Entities in respect of these proceedings, at their standard rates and charges; and
- (d) with the consent of the Monitor, amounts owing for goods or services actually supplied to the Mastermind Entities prior to the Filing Date by (i) providers of credit, debit and gift card processing related services, (ii) logistics, warehouse or supply chain providers, such as transportation providers, customs brokers and freight forwarders, (iii) providers of information, internet and other technology, including ecommerce providers and related services, and (iv) other suppliers or service providers if, in the opinion of the Mastermind Entities, following consultation with the Monitor,

such payment is necessary to maintain the uninterrupted operations of the Business.

8. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein and subject to the Forbearance Agreement, the Mastermind Entities shall be entitled but not required to pay all reasonable expenses incurred by the Mastermind Entities in carrying on the Business in the ordinary course after this Order in accordance with the Approved Cash Flow, and in carrying out the provisions of this Order, which expenses shall, subject to the Forbearance Agreement 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), IT services, data services, maintenance and security services; and
- (b) payment for goods or services actually supplied to the Mastermind Entities following the Filing Date.

9. **THIS COURT ORDERS** that the Mastermind Entities shall, in accordance with legal requirements and subject to the Forbearance Agreement, remit 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 taxes, harmonized sales taxes, or other applicable sales taxes (collectively, “**Sales Taxes**”) required to be remitted by the Mastermind Entities in connection with the sale of goods and services by the Mastermind Entities, but only where such Sales Taxes are accrued or collected after the Filing Date, or where such Sales Taxes were accrued or collected prior to the Filing Date but not required to be remitted until on or after the Filing Date; and
- (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 the Mastermind Entities.

10. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Mastermind 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 Mastermind Entities, the making of this Order or the commencement of any insolvency proceedings) or as otherwise may be negotiated between the applicable Mastermind Entity and the landlord from time to time (“**Rent**”), for the period commencing from and including the Filing Date, twice monthly in equal payments on the first and fifteenth day

of each month, in advance (but not in arrears) in the amounts set out in the applicable lease or, with the consent of the Monitor, at such other intervals and dates as may be agreed to between the applicable Mastermind Entity and landlord. On the date of the first of such payments, any Rent relating to the period commencing from and including the Filing Date shall also be paid.

11. **THIS COURT ORDERS** that, except as specifically permitted herein or in the Forbearance Agreement and the Credit Agreement, the Mastermind 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 Mastermind Entities to any of their creditors as of the Filing Date, other than payments of principal, interest or amounts otherwise owing by the Mastermind Entities pursuant to the Credit Agreement; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

RESTRUCTURING

12. **THIS COURT ORDERS** that the Mastermind Entities shall, subject to such requirements as are imposed by the CCAA, such covenants as may be contained in the Credit Agreement or the Forbearance Agreement 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 \$25,000 in any one transaction or \$50,000 in the aggregate;

- (b) vacate, abandon or quit the whole but not any part of any leased premises and/or disclaim any real property lease, and all ancillary agreements relating to any leased premises;
- (c) sell inventory in the ordinary course of business consistent with past practice, or otherwise with the consent of the Monitor and the Agent;
- (d) terminate the employment of their employees or temporarily lay off such of their employees as they deem appropriate;
- (e) refuse to honour any existing return policies, refunds, discounts or other similar customer programs or obligations; and
- (f) pursue all avenues of financing, restructuring, sale or reorganizing the Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing, restructuring, sale or reorganizing,

all of the foregoing to permit the Mastermind Entities to proceed with an orderly restructuring of the Mastermind Entities or the Business (the “**Restructuring**”); provided that with respect to real property leases, the Mastermind Entities may, subject to the provisions of the CCAA and paragraphs 10, 13 and 14 herein, vacate, abandon or quit the whole (but not part of) and may permanently (but not temporarily) cease, downsize or shut down any of the Business or operations in respect of any leased premises.

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

14. **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 Mastermind 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 Mastermind Entities 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.

NO PROCEEDINGS AGAINST THE MASTERMIND ENTITIES OR THE PROPERTY

15. **THIS COURT ORDERS** that until and including January 26, 2024 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 Mastermind Entities or the Monitor or their respective employees and representatives acting in such capacities, or affecting the Business or the Property, except with the written consent of the Mastermind Entities and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of any of the Mastermind Entities 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 Mastermind Entities and the Monitor.

NO EXERCISE OF RIGHTS OR REMEDIES

16. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, organization, governmental unit, body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of any of the Mastermind 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 Mastermind Entities and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Mastermind Entities to carry on any business which the Mastermind 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, (iv) prevent the registration of a claim for lien, or (v) subject to paragraph 42 hereof, prevent the Agent from exercising any rights or remedies against the Mastermind Entities or the Property under or pursuant to the Credit Agreement, the Blocked Accounts Agreement, the Forbearance Agreement or any other Loan Document (as defined in the Credit Agreement) or the DIP Charge (as defined below).

NO INTERFERENCE WITH RIGHTS

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

CONTINUATION OF SERVICES

18. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements or arrangements with any of the Mastermind Entities 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, logistics services, transportation services, customs clearing and importing services, warehouse services, security services, management services, merchandise or procurement sourcing services, utility or other services to the Business or any of the Mastermind Entities, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply or

license of such goods or services as may be required by any of the Mastermind Entities, and that the Mastermind 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 Filing Date are paid by the Mastermind Entities in accordance with normal payment practices of the applicable Mastermind Entity or such other practices as may be agreed upon by the supplier or service provider and the applicable Mastermind Entity and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

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

APPROVAL OF KEY EMPLOYEE RETENTION PLAN

20. **THIS COURT ORDERS** that the Key Employee Retention Plan (the “**KERP**”) as described in the Second Milanovich Affidavit and attached as confidential Exhibit “O” thereto, is hereby approved and the Mastermind Entities are authorized to make the payments contemplated thereunder in accordance with the terms and conditions of the KERP.

21. **THIS COURT ORDERS** that the key employees referred to in the KERP (the “**KERP 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 \$286,000, to secure any payments to the KERP Employees under the KERP. The KERP Charge shall have the priority set out in paragraphs 44 and 46 herein.

NO PRE-FILING VERSUS POST-FILING SET-OFF

22. **THIS COURT ORDERS** that no Person shall be entitled to set off any amounts that (a) are or may become due to any Mastermind Entity in respect of obligations arising prior to the Filing Date with any amounts that are or may become due from such Mastermind Entity in respect of obligations arising on or after the Filing Date, or (b) are or may become due from any Mastermind Entity in respect of obligations arising prior to the Filing Date with any amounts that are or may become due to such Mastermind Entity in respect of obligations arising on or after the Filing Date, each without the consent of the Mastermind Entities and the Monitor or further Order of this Court.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

23. **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 Mastermind 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 Mastermind 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 Plan in respect of

the Mastermind Entities, if one is filed, is sanctioned by this Court or is refused by the creditors of the Mastermind Entities or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

24. **THIS COURT ORDERS** that the Mastermind Entities shall indemnify their respective directors and officers against obligations and liabilities that they may incur as directors or officers of the Mastermind 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.

25. **THIS COURT ORDERS** that the directors and officers of each of the Mastermind Entities shall be entitled to the benefit of and are hereby granted a charge (the "**D&O Charge**") on the Property, which charge shall not exceed an aggregate amount of \$5,000,000, unless permitted by further Order of this Court, as security for the indemnity provided in paragraph 24 of this Order. The D&O Charge shall have the priority set out in paragraphs 44 and 46 herein.

26. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the D&O Charge, and (b) the Mastermind Entities' directors and officers shall only be entitled to the benefit of the D&O Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 24 of this Order.

APPOINTMENT OF MONITOR

27. **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 Mastermind Entities with the powers and obligations set out in the CCAA or set forth herein and that the Mastermind Entities and their respective shareholders or partners (as applicable), officers, directors, and Assistants shall advise the Monitor of all material steps taken by any of the Mastermind 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.

28. **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 Mastermind Entities' receipts and disbursements;
- (b) 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 Restructuring, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Mastermind Entities, to the extent required by the Mastermind Entities, with the Restructuring, including in continuing negotiations with any Person in an effort to pursue the Restructuring;
- (d) liaise and consult with the Mastermind Entities, any liquidation agents or consultants that are approved by this Court, and any Assistants, to the

extent required, with respect to all matters relating to the Property, the Business, the Restructuring, and such other matters as may be relevant to the proceedings herein;

- (e) assist the Mastermind Entities, to the extent required by the Mastermind Entities, in their dissemination to the Agent and its counsel of financial and other information as agreed to between the Mastermind Entities and the Agent pursuant to the Credit Agreement, the Forbearance Agreement, or otherwise;
- (f) advise the Mastermind Entities in their development of the Plan and amendment to the Plan, if applicable;
- (g) assist the Mastermind Entities, to the extent required by the Mastermind Entities, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (h) 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 Mastermind Entities, wherever located and to the extent that is necessary to adequately assess the Mastermind Entities' business and financial affairs or to perform its duties arising under this Order;
- (i) 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

- (j) perform such other duties as are required by this Order or by this Court from time to time.

29. **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.

30. **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, 1999*, 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.

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

32. **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.

33. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Mastermind Entities, shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on or after the Filing Date, by the Mastermind Entities as part of the costs of these proceedings. The Mastermind Entities are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Mastermind Entities on a weekly basis or as otherwise agreed among the parties.

34. **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.

35. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Mastermind 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 \$1,000,000, 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 44 and 46 herein.

FORBEARANCE AGREEMENT AND DIP CHARGE

36. **THIS COURT ORDERS** that the execution, delivery and performance by the Mastermind Entities of the Forbearance Agreement is hereby authorized and approved, with such minor amendments as the Mastermind Entities and the Agent, with the approval of the Monitor may agree upon. The Mastermind Entities are hereby authorized and directed to comply with and perform the provisions of the Forbearance Agreement and the Credit Agreement.

37. **THIS COURT ORDERS** that the Mastermind Entities’ compliance with, and performance of, the Blocked Accounts Agreement from and after the date of this Order is hereby authorized and approved.

38. **THIS COURT ORDERS** that Mastermind LP shall be entitled, subject to the terms of the Forbearance Agreement and the Credit Agreement and paragraphs 6 and 39 of this Order, to continue to obtain and borrow, repay and re-borrow monies under the Revolving Loan Facility pursuant to the Forbearance Agreement and Credit Agreement in order to finance Mastermind LP's working capital requirements.

39. **THIS COURT ORDERS** that subject to the provisions of the Credit Agreement, the Forbearance Agreement and the Blocked Accounts Agreement and paragraph 39 of this Order, the Mastermind Entities are hereby authorized and directed to pay all of their indebtedness, interest, fees, liabilities and obligations to the Agent under and pursuant to the Credit Agreement and the Forbearance Agreement, whether such indebtedness arose before or after the Filing Date.

40. **THIS COURT ORDERS** that the Agent may, in accordance with the terms of the Credit Agreement, the Forbearance Agreement and the Blocked Accounts Agreement, and as described in the Milanovich Affidavits, apply the proceeds of inventory or other property subject to a lien in favour of the Agent deposited in the Mastermind Entities' bank accounts (other than the HST Account), whether directly or through blocked accounts, against the indebtedness of the Mastermind Entities under the Credit Agreement and the Forbearance Agreement, whether such indebtedness arose before or after the Filing Date, provided that no advance of funds made under the Credit Agreement on or after the date of this Order shall be used to reduce any pre-filing obligations of the Mastermind Entities under the Credit Agreement or Forbearance Agreement.

41. **THIS COURT ORDERS** that the Agent shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Charge**”) on the Property as security for any advances made under the Credit Agreement from and after the date of this Order, which DIP Charge shall not secure an obligation that exists before the date of this Order and shall not exceed the aggregate amount of \$36,250,000, plus interest, costs and expenses. The DIP Charge shall have the priority set out in paragraphs 44 and 46 herein.

42. **THIS COURT ORDERS** that, the Agent may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Charge, and upon the earlier of the occurrence of a Terminating Event or the last day of the Forbearance Period (each as defined in the Forbearance Agreement) notwithstanding any other provision of this Order:

- (a) the Agent may cease making advances to Mastermind LP;
- (b) the Agent may, upon five (5) days prior written notice to the Mastermind Entities and the Monitor:
 - (i) exercise any and all rights or remedies against the Mastermind Entities or the Property under or pursuant to the Credit Agreement, the Blocked Accounts Agreement, the Forbearance Agreement or any other Loan Document (defined in the Credit Agreement) or the DIP Charges;
 - (ii) set off and/or consolidate any amounts owing by the Agent to the Mastermind Entities against the obligations of the Mastermind

Entities to the DIP Lender under the Credit Agreement, the Blocked Accounts Agreement, the Forbearance Agreement or any other Loan Document (defined in the Credit Agreement) and make demand, accelerate payment and give other notices;

(iii) exercise any and all rights or remedies against the Mastermind Entities or the Property under or pursuant to the Credit Agreement, the Blocked Accounts Agreement, the Forbearance Agreement or any other Loan Document (defined in the Credit Agreement); and

(iv) apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Mastermind Entities and for the appointment of a trustee in bankruptcy of the Mastermind Entities;

(c) the foregoing rights and remedies of the Agent shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Mastermind Entities or the Property.

43. **THIS COURT ORDERS AND DECLARES** that the Agent shall be treated as unaffected in the Plan (if any) filed by the Mastermind Entities under the CCAA, or any proposal filed by the Mastermind Entities under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”), with respect to any obligations outstanding under the Credit Agreement or the Forbearance Agreement as of, from or after the Filing Date.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

44. **THIS COURT ORDERS** that the priorities of the KERP Charge, the D&O Charge, the Administration Charge and the DIP Charge and (collectively, the “**Charges**”), as among them, shall be as follows:

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

Second – D&O Charge (to the maximum amount of \$5,000,000);

Third – DIP Charge (to the maximum amount of \$36,250,000, plus interest, fees and expenses);

Fourth – KERP Charge (to the maximum amount of \$286,000);.

45. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be effective as against the Property and 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.

46. **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 attached.

47. **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 Mastermind

Entities shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Mastermind Entities also obtain the prior written consent of the Monitor and the other beneficiaries of the Charges, or further Order of this Court.

48. **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**”) 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 Mastermind Entities, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Credit Agreement or the Forbearance Agreement shall create or be deemed to constitute a breach by any Mastermind 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 or the Mastermind Entities entering into the

Forbearance Agreement or the execution, delivery or performance of the Credit Agreement, Forbearance Agreement or any other Loan Document; and

- (c) the payments made by the Mastermind 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.

49. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the applicable Mastermind Entity's interest in such real property leases.

SEALING

50. **THIS COURT ORDERS** that the KERP and related payment information attached as confidential Exhibit "O" to the Second Milanovich Affidavit are hereby sealed and shall not form part of the Court record, subject to further order of this Court.

SERVICE AND NOTICE

51. **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 Filing Date, (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 Mastermind Entities, a notice to every known creditor who has a claim against any of the Mastermind 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.

52. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/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 Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL: <https://www.alvarezandmarsal.com/Mastermind>.

53. **THIS COURT ORDERS** that if the service, distribution or notice of documents in accordance with the Guide or the CCAA and the regulations thereunder is not practicable, the Mastermind 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 Mastermind Entities’ creditors or other interested parties at their

respective addresses (including e-mail addresses) as last shown in the books and records of the Mastermind 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 Time), (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 Time), or (c) on the business day following the date of forwarding thereof, if sent by ordinary mail.

54. **THIS COURT ORDERS** that the Mastermind 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 copies thereof by electronic message (including by e-mail) to the Mastermind Entities' creditors or other interested parties and their advisors, as applicable. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations* (SOR/2013-221).

GENERAL

55. **THIS COURT ORDERS** that any interested party that wishes to amend or vary this Order shall be entitled to appear or bring a motion before this Court to vary or amend this order on not less than seven (7) days' notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order; provided, however, that the Chargees shall be entitled to rely on this Order as granted and on the Charges and priorities set forth in paragraphs 44 and 46 hereof

with respect to any advances made and payments received under the Credit Agreement and Forbearance Agreement, and any fees, expenses and disbursements incurred, as applicable, until the date this Order may be amended, varied or stayed.

56. **THIS COURT ORDERS** that, notwithstanding paragraph 55 of this Order, each of the Mastermind 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 respective powers and duties hereunder or in the interpretation of this Order.

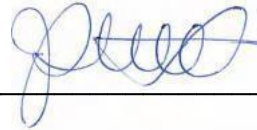
57. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of any of the Mastermind Entities, the Business or the Property.

58. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Mastermind Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Mastermind Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Mastermind Entities and the Monitor and their respective agents in carrying out the terms of this Order.

59. **THIS COURT ORDERS** that each of the Mastermind Entities and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal,

regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

60. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Eastern Time) on the date of this Order without the need for entry or filing.



TAB F

This is **Exhibit "F"** referred to in the Affidavit of LUCIO MILANOVICH of the City of Toronto, in the Province of Ontario, before me at the City of Toronto in the Province of Ontario, on the 5th day of January, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for taking affidavits
Kristine Spence (LSO #66099S)



Court File No. CV-23-00710259-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE

)

THURSDAY, THE 30th

JUSTICE STEELE

)

DAY OF NOVEMBER, 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 MASTERMIND GP INC.

(the "**Applicant**")

LIQUIDATION SALE APPROVAL ORDER

THIS MOTION, made by the Applicant pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an order, among other things, approving the transactions contemplated under a consulting agreement between Gordon Brothers Canada ULC (the "**Consultant**") and Mastermind LP ("**Mastermind LP**" and together with the Applicant, the "**Mastermind Entities**") dated as of November 24, 2023 (the "**Consulting Agreement**") and certain related relief, was heard this day via videoconference.

ON READING the Notice of Motion of the Applicant, the Affidavit of Lucio Milanovich sworn on November 29, 2023 and the exhibits thereto and the First Report of Alvarez & Marsal Canada Inc., in its capacity as Court-appointed monitor (the "**Monitor**"), dated November 29, 2023, and on hearing the submissions of respective counsel for the Mastermind Entities, the Monitor, Canadian Imperial Bank of Commerce, in its capacity as administrative agent for the lenders under the credit agreement dated October 24, 2014 with Mastermind LP as borrower and the Applicant as guarantor, the Consultant,

and such other counsel as were present, no one else appearing although duly served as appears from the Affidavit[s] of Service, filed:

SERVICE AND DEFINITIONS

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

2. **THIS COURT ORDERS** that all capitalized term used and not defined herein shall have the meaning ascribed thereto in the Consulting Agreement or the Amended and Restated Initial Order in these proceedings dated November 30, 2023 (as amended and restated from time to time the “**Initial Order**”) as applicable.

THE CONSULTING AGREEMENT

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

THE LIQUIDATION SALE

4. **THIS COURT ORDERS** that Mastermind LP, with the assistance of the Consultant, is authorized to conduct the Sale in accordance with this Order, the Consulting Agreement and the Sale Guidelines and to advertise and promote the

Sale in accordance with the Sale Guidelines. If there is a conflict between this Order, the Consulting Agreement and the Sale Guidelines, the order of priority of documents to resolve such conflicts is as follows: (1) this Order; (2) the Sale Guidelines; and (3) the Consulting Agreement.

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

6. **THIS COURT ORDERS** that, subject to the terms of this Order, the Initial Order and the Sale Guidelines, or any greater restrictions in the Consulting Agreement or the Sale Guidelines, the Consultant shall have the right to enter and use the Stores and all related store services and all facilities and all furniture, trade fixtures and equipment, including the FF&E, located at the Stores, and other assets of Mastermind LP as designated under the Consulting Agreement, for the purpose

of conducting the Sale and for such purposes, the Consultant shall be entitled to the benefit of Mastermind LP's stay of proceedings provided under the Initial Order, as such stay of proceedings may be extended by further Order of the Court.

7. **THIS COURT ORDERS** that until the Sale Termination Date for each Store, which date shall be no later than February 29, 2024, or such other as may be agreed upon by Mastermind LP, the Consultant, the Monitor and the applicable landlord, the Consultant shall have access to (a) the Stores in accordance with the applicable Lease (as defined in the Sale Guidelines), (b) the Distribution Centre in accordance with the applicable contractual agreements between Mastermind LP and the third party operator of the Distribution Centre, and (c) the Corporate Office in accordance with the applicable Lease, in each case in accordance with the Sale Guidelines, as applicable, and on the basis that the Consultant is assisting Mastermind LP and Mastermind LP has granted the right of access to the applicable Stores, the Distribution Centre and Corporate Office to the Consultant. To the extent that the terms of the applicable Leases are in conflict with any term of this Order or the Sale Guidelines, the terms of this Order and the Sale Guidelines shall govern.

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

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

10. **THIS COURT ORDERS** that until the Sale Termination Date, the Consultant shall have the right to use, without interference by any Person (including

intellectual property licensor), any and all of Mastermind LP's trade names, trademarks and logos relating to and used in connection with the operation of the Stores, as well as any and all licenses and rights granted to Mastermind LP to use the trade names, trademarks, and logos of third parties, solely for the purpose of advertising and conducting the Sale of the Merchandise, FF&E and Additional Consultant Goods in accordance with the terms of the Consulting Agreement, the Sale Guidelines, and this Order.

CONSULTANT LIABILITY

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

- (a) the Consultant shall not be deemed to be an owner or in possession, care, control or management of the Stores, the Distribution Centre or Corporate Office, of the assets located therein or associated therewith or of Mastermind LP's employees located at the Stores, the Distribution Centre or Corporate Office or any other property of Mastermind LP;
- (b) the Consultant shall not be deemed to be an employer, or a joint or successor employer or a related or common employer or payor within the meaning of any legislation governing employment or labour standards or pension benefits or health and safety or other statute, regulation or rule of law or equity for any purpose whatsoever in relation to the employees of Mastermind LP, and shall not incur any successorship liabilities whatsoever; and
- (c) Mastermind LP shall bear all responsibility for any liability whatsoever (including without limitation, losses, costs, damages, fines or awards) relating to Claims of customers, employees and any other Persons arising from events occurring at the Stores during and after the term of the Sale, or

otherwise in connection with the Sale, except to the extent that such liability or Claims arise from or relate to matters that the Consultant has indemnified the Merchant Indemnified Parties for pursuant to section 9(b) of the Consulting Agreement.

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

CONSULTANT AN UNAFFECTED CREDITOR

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

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

15. **THIS COURT ORDERS** that no Encumbrances shall attach to any amounts payable or to be credited or reimbursed to, or retained by, the Consultant pursuant

to the Consulting Agreement, including, without limitation, any amounts to be reimbursed by Mastermind LP to the Consultant pursuant to the Consulting Agreement, and at all times the Consultant will retain such amounts, free and clear of all Encumbrances, notwithstanding any enforcement or other process or Claims, all in accordance with the Consulting Agreement.

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

- (a) the pendency of these proceedings;
- (b) any application for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) ("**BIA**") in respect of the Mastermind Entities, or any bankruptcy order made pursuant to any such applications;
- (c) any assignment in bankruptcy made in respect of the Mastermind Entities;
- (d) the provisions of any federal or provincial statute; or
- (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other document or agreement to which the Mastermind Entities are a party;

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

OTHER

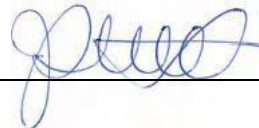
17. **THIS COURT ORDERS** that the Mastermind Entities are authorized and permitted to transfer to the Consultant the Personal Information in the Mastermind Entities' custody and control solely for the purposes of assisting with and conducting the Sale and only to the extent necessary for such purposes.

GENERAL

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

19. **THIS COURT HEREBY REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, to give effect to this Order and to assist the Mastermind Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Mastermind Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Mastermind Entities and the Monitor and their respective agents in carrying out the terms of this Order.

20. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of the date of this Order without the need for entry or filing.



**SCHEDULE “A”
SALE GUIDELINES**

(See attached)

SALE GUIDELINES

The following procedures shall apply to the sale (the **"Sale"**) of merchandise, furniture, fixtures and equipment at Mastermind LP's (the **"Merchant"**) retail stores (individually, a **"Store"** and, 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 November 23, 2023 in connection with the proceedings under the *Companies' Creditors Arrangement Act* (Canada) (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 November 30, 2023 in the CCAA Proceedings (the **"Approval Order"**), approving the Consulting Agreement between Gordon Brothers Canada ULC (the **"Consultant"**) and Merchant, dated as of November 24, 2023 (the **"Consulting Agreement"**) and the transactions contemplated thereunder, (ii) any further Order of the Court, or (iii) any subsequent written agreement between the Merchant and its applicable landlord(s) (individually, a **"Landlord"** and, collectively, the **"Landlords"**) and approved by the 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 the Merchant or the 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 February 29, 2024, or such other date as may be agreed upon by the Consultant, the Merchant, the Monitor and the applicable landlord, 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 ordered by the Court.
4. All display and hanging signs used by the 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, the 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", "Liquidation", "Going out of Business" or refer to a court as having approved the Sale or refer to a "Trustee" and/or "Receiver", unless otherwise agreed between the Consultant and applicable Landlord, 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, the Merchant or the Monitor, the Consultant shall provide the proposed signage packages along with proposed dimensions by email or facsimile to the applicable Landlord or to its counsel of record and the applicable Landlord shall notify the 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. The 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, the Merchant, the Consultant and such 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, the 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 applicable 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 recipients listed in the service list in respect of the CCAA Proceedings (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 the Consultant.

5. The 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. The Consultant shall be entitled to include additional merchandise of the Merchant in the Sale, including (i) additional merchandise that is currently in the possession or control of the Merchant (including in any distribution centre used by the Merchant) or has previously been ordered by or on behalf of the Merchant and is currently in transit to the Merchant (including any distribution centre used by the Merchant) or a Store; and (ii) the additional merchandise is of like kind and category and no lesser quality to the Merchandise
7. 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 the Merchant's hotline number.
8. The Consultant shall not distribute handbills, leaflets or other written materials to customers outside of any of the Stores on a 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, the Consultant may solicit customers in the Stores themselves. The 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 applicable Landlord, and no advertising trucks shall be used on a Landlord's property or mall ring roads, except as explicitly permitted under the applicable Lease or agreed to by such Landlord.

9. At the conclusion of the Sale in each Store, the 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 the 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 such Landlord. Nothing in this paragraph shall derogate from or expand upon the Consultant's obligations under the Consulting Agreement.
10. Subject to the terms of paragraph 9 above, the Consultant may sell furniture, fixtures and equipment owned by the Merchant ("**Merchant FF&E**") and located in the Stores during the Sale. For greater certainty, Merchant FF&E does not include any portion of any of the Stores' HVAC system, fire suppression system and fire alarm or sprinkler system. The Merchant and the Consultant may advertise the sale of Merchant FF&E consistent with these Sale Guidelines on the understanding that the applicable Landlord may require such signs to be placed in discreet locations within the Stores reasonably acceptable to such 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 applicable 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 applicable Landlord's supervision as required by such Landlord and in accordance with the Initial Order and the Approval Order. The Consultant shall repair any damage to the Stores resulting from the removal of any Merchant FF&E by the Consultant or by third party purchasers of Merchant FF&E from the Consultant.
11. The 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.
12. The Merchant hereby provides notice to the Landlords of the Merchant's and the Consultant's intention to sell and remove Merchant FF&E from the Stores. The 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 the Consultant to identify Merchant FF&E subject to the Sale. The relevant Landlord shall be entitled to have a representative present in the applicable Store(s) to observe such removal. If the relevant Landlord disputes the Consultant's entitlement to sell or remove any Merchant FF&E under the provisions of the applicable Lease, such Merchant FF&E shall remain on the premises and shall be dealt with as agreed between the Merchant, the Consultant and such Landlord, or by further Order of the Court upon application by the Merchant on at least two (2) days' notice to such Landlord and the Monitor. If the Merchant has disclaimed or resiliated the Lease governing such Store in accordance with the CCAA Proceedings 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 Proceedings and the Initial Order), and the disclaimer or resiliation of the Lease shall be without prejudice to the Merchant's or the Consultant's claim to Merchant FF&E in dispute.

13. If a notice of disclaimer or resiliation is delivered pursuant to the CCAA Proceedings 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, such Landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Merchant, the Monitor and the Consultant twenty-four (24) hours' prior written notice; and (ii) at the effective time of the disclaimer or resiliation, such 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 the 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.
14. The Consultant and its agents and representatives shall have the same access rights to each Store as the Merchant under the terms of the applicable Lease, and each of the Landlords shall have the rights of access to each applicable Store 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).
15. The Merchant and the Consultant shall not conduct any auctions of Merchandise or Merchant FF&E at any of the Stores.
16. The 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 the Consultant shall be David Braun or Durien Sanchez, who may be reached by email at dbraun@gordonbrothers.com or dsanchez@gordonbrothers.com. If the parties are unable to resolve the dispute between themselves, the applicable Landlord or the 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 the 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, the Consultant shall not be required to take any such banner down pending determination of any dispute.

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

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

Court File No. CV-23-00710259-
00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MASTERMIND GP INC.

Applicant

	ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST Proceeding commenced at Toronto
	SALE APPROVAL ORDER
	DAVIES WARD PHILLIPS & VINEBERG LLP 155 Wellington Street West Toronto ON M5V 3J7 Natasha MacParland (LSO#42383G) Tel: 416.863.5567 Email: nmacparland@dwpv.com Natalie Renner (LSO#55954A) Tel: 416.367.7489 Email: nrenner@dwpv.com Kristine Spence (LSO#66099S) Tel: 416.367.7573 Email: kspence@dwpv.com Lawyers for Mastermind GP Inc.

TAB G

This is **Exhibit "G"** referred to in the Affidavit of LUCIO MILANOVICH of the City of Toronto, in the Province of Ontario, before me at the City of Toronto in the Province of Ontario, on the 5th day of January, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for taking affidavits
Kristine Spence (LSO #66099S)

ASSET PURCHASE AGREEMENT

MASTERMIND LP

- and -

UNITY ACQUISITIONS INC.

December 1, 2023

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ASSET PURCHASE AGREEMENT

THIS AGREEMENT made the 1st day of December, 2023,

BETWEEN:

MASTERMIND LP,

a limited partnership existing under the laws of the
Province of Ontario,

(hereinafter referred to as “**Seller**”),

- and -

UNITY ACQUISITIONS INC.,

a corporation existing under the federal laws of
Canada,

(hereinafter referred to as “**Buyer**”).

WHEREAS the business carried on by Seller consists primarily of the operation of a children’s toys and games retail business in Canada under the “Mastermind” banner (together with any other related business activity undertaken by Seller, the “**Business**”);

AND WHEREAS on November 23, 2023 (the “**Filing Date**”), Seller obtained protection from its creditors and certain relief under the *Companies’ Creditors Arrangement Act* (Canada) (the “**CCAA**”) and Alvarez & Marsal Canada Inc. was appointed as the court-appointed monitor of Seller (the “**Monitor**”);

AND WHEREAS subject to approval of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), Seller has agreed to sell, transfer and assign to Buyer and Buyer has agreed to purchase certain of Seller’s assets used in connection with, and assume certain liabilities and obligations of, the Business, upon the terms and subject to the conditions set forth herein.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the respective covenants and agreements of the Parties set out in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which are acknowledged by each Party), the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Defined Terms

For the purposes of this Agreement, unless the context otherwise requires, the following terms have the respective meanings set out below, and grammatical variations of such terms have corresponding meanings:

“Accounts Receivable” has the meaning set out in Section 2.1(b);

“Adjustment Amount” has the meaning set out in Section 3.8(a);

“Adjustment Date” means the third Business Day after the date on which the Purchase Price is finally determined in accordance with Section 3.7;

“Affiliate” means, in respect of any specified Entity, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such specified Entity. For purposes of this definition, “control” is the power, directly or indirectly, to direct the management and policies of an Entity, whether through ownership of voting securities, by contract or otherwise, and “controlled by” has a similar meaning;

“Ancillary Order” means an order of the Court, in form and substance satisfactory to Seller and Buyer, and obtained on a motion made on notice to such Persons as Seller and Buyer determine, to be sought by Seller seeking certain ancillary relief required to implement the Transactions;

“Approval and Vesting Order” means an order granted by the Court substantially in the form attached hereto as Exhibit A or such form as otherwise agreed in writing by the Buyer and Seller, acting reasonably, and issued by the Court on a motion served in a manner satisfactory to Seller and Buyer on those Persons identified by Seller and Buyer;

“Annual Statement Consistent Policies” means the accounting methods, policies, practices and procedures, with consistent classifications, judgments, interpretations, methodologies and estimation techniques (including in respect of management judgment) as actually applied in the preparation of Seller’s annual financial statements as at and for the financial year ended December 31, 2022;

“Assumed Authorizations” has the meaning set out in Section 2.1(i);

“Assumed Contracts” has the meaning set out in Section 2.1(h);

“Assumed Liabilities” has the meaning set out in Section 2.3(a);

“Assumed Real Property Leases” has the meaning set out in Section 2.1(c);

“Authorization” means any order, permit, approval, consent, waiver, licence, certificate, qualification, registration or similar authorization issued by any Governmental Authority pursuant to applicable Laws;

“Books and Records” means books and records of the Business in respect of or that relate to the Purchased Locations, including financial, corporate, operations, purchase and sales books and records, lists of suppliers and customers, formulae, business reports, plans and projections and all other documents, surveys, plans, files, records, assessments, correspondence and other data and information, financial or otherwise, including all data, information and databases stored on computer related or other electronic media, and such media itself;

“Business” has the meaning set out in the recitals to this Agreement;

“Business Day” means any day, other than a Saturday, Sunday or statutory holiday in the Province of Ontario, on which commercial banks in Toronto, Ontario are open for business;

“Buyer” has the meaning set out in the recitals to this Agreement;

“Buyer Notes” means the interest bearing and non-interest bearing promissory notes issued by Seller and held by Buyer, as described in Schedule 1.1(a), together with any non-interest bearing promissory notes issued by Seller to Buyer in respect of such promissory notes following the date hereof;

“Cash” means, as of any time, the aggregate amount of cash, cash equivalents and marketable securities of Seller as of such time; provided that Cash (a) will be increased by deposits in transit as of such time, (b) will be decreased by any outstanding cheques, wires or drafts that have been issued but not yet cleared as of such time and (c) shall exclude Petty Cash, and which Cash amounts shall be calculated in accordance with (i) the Annual Statement Consistent Policies and (ii) to the extent not inconsistent with the Annual Statement Consistent Policies, GAAP;

“CASL” means An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the *Canadian Radio-television and Telecommunications Commission Act*, the *Competition Act*, the *Personal Information Protection and Electronic Documents Act* and the *Telecommunications Act* (Canada);

“CCAA” has the meaning set out in the recitals to this Agreement;

“CCAA Assignment Order” means an order (or orders) of the Court made pursuant to section 11.3 of the CCAA, in form and substance satisfactory to Seller and Buyer, acting reasonably, and obtained on a motion made on notice to such Persons as Seller and Buyer determine, to be sought by Seller:

- (a) authorizing and approving the assignment to Buyer of any Assumed Real Property Leases, Assumed Contracts, Purchased IP and Assumed Authorizations (in this definition, the “assigned documents”) for which a consent, approval or waiver necessary for the assignment of same has not been obtained prior to the Time of Closing,
- (b) preventing any counterparty to the assigned documents from exercising any right or remedy in respect of same by reason of any default(s) arising from the CCAA Proceedings, the insolvency of Seller, the assignment of such assigned documents, or the failure of Seller to perform a non-monetary obligation under the assigned documents, and
- (c) vesting in Buyer all right, title, benefit and interest of Seller in the assigned documents;

“CCAA Proceedings” means the proceedings under the CCAA to which Seller is subject pursuant to the Initial Order;

“CIBC” has the meaning set out in Section 9.1(a)(ii);

“CIBC Breach” has the meaning set out in Section 9.1(a)(ii);

“CIBC Credit Agreement” means the credit agreement dated October 24, 2014 entered into among Seller, the General Partner and CIBC, as lender, and the other lenders party thereto from time to time;

“CIBC Debt” means the aggregate amounts owing by Seller under the CIBC Credit Agreement, including principal, interest and all other amounts;

“Claim” means any written demand, claim, complaint, suit, action, cause of action, investigation, Proceeding or notice by any person alleging actual or potential Liability in respect of a violation, breach or default, the occurrence of an event that, with the passage of time or the giving of notice or both, would constitute a violation, breach or default, or the occurrence of an event that (with or without the passage of time or the giving of notice or both) would give rise to a right of damages, specific performance, termination, suspension, renegotiation or acceleration (including acceleration of payment);

“Closing” means the closing of the Transactions;

“Closing Cash Payment” means either:

■ [REDACTED]

■ [REDACTED]

“Closing Date” means January 15, 2024, or such earlier or later date as agreed to by Seller, Buyer and the Monitor;

[REDACTED]

“Confidentiality Agreement” means the confidentiality agreement dated June 14, 2023 between New York Brand Studio Inc., an Affiliate of Buyer, and Seller;

“Contract” means any contract, agreement, lease, licence, indenture, instrument or other commitment, whether written or oral;

“Court” has the meaning set out in the recitals to this Agreement;

“Court Ordered Charges” means the Court-ordered charges under the Initial Order or any other order of the Court in respect of the CCAA Proceedings;

“Cure Costs” means, in respect of any Assumed Contract, Assumed Real Property Lease, Purchased IP or Assumed Authorization, all amounts (if any) that must be paid by Buyer pursuant to section 11.3(4) of the CCAA;

“Deposit” means the deposit in the amount of [REDACTED] paid by Buyer to the Monitor in accordance with Section 3.4, plus interest thereon at a market effective annual rate applicable to the trust account maintained by the Monitor calculated from the date such amount was deposited by the Monitor to its trust account;

“Discretionary Bonus Pool” means up to [REDACTED] per Non-Purchased Location that Seller may offer to store-level managerial Employees as compensation for assisting with and facilitating the sale or liquidation of all or substantially all of the assets of the Non-Purchased Locations of Seller;

“Employee Plans” means the group health and welfare benefit plans administered, sponsored, maintained, contributed to or required to be contributed to by Seller for the benefit of any Employees of the Business or their respective beneficiaries;

“Employees” means any and all employees or independent contractors (whether dependent or independent) of Seller who are actively at work (including full-time, part-time or temporary employees), as well as those who are on lay-off or other leaves of absence (including pregnancy leave, parental leave, disability leave, sickness leave, workers’ compensation and other statutory or approved leaves);

“Encumbrance” means all liens (statutory or otherwise), charges, security interests, hypothecs, pledges, leases, offers to lease, rights of occupation, title retention agreements or arrangements, reservations of ownership, rights-of-way, easements, servitudes, mortgages, restrictions on transfer or dealings, restrictions on use, development or similar agreements, title defects, work orders, options, adverse claims, encroachments, prior claims, assignments, liabilities (direct, indirect, absolute or contingent), obligations, trusts or deemed trusts (whether contractual, statutory or otherwise arising), judgments, writs of seizure or execution, legal notations, notices of sale, contractual rights, rights of first refusal, or any other right or interest of any nature or any other financial or monetary claims or any other arrangement or condition whether or not registered, published or filed, statutory or otherwise, secured or unsecured, or other encumbrances of any kind or character whatsoever, including, without limiting the generality of the foregoing:

- (a) any and all Court Ordered Charges granted in the CCAA Proceedings; and
- (b) all charges, security interests or claims evidenced by registrations under the *Personal Property Security Act* (Ontario) or any other personal property registry system;

“Entity” means a Person other than an individual;

“Estimated Closing Price” means the estimated Closing Cash Payment determined in accordance with Section 3.3, together with the Deposit and the BH Payment;

“ETA” means Part IX of the *Excise Tax Act* (Canada);

“Excluded Assets” has the meaning set out in Section 2.2;

“Excluded Insurance Claims” means any claims, actions or other rights Seller may have under (a) any past or present director’s and officer’s insurance policies, insurance contracts and agreements covering the directors and officers of Seller or its general

partner, and (b) any other past or present insurance policies, insurance policies and agreements of Seller if and to the extent the claim, action or right relates solely to (A) the Retained Liabilities, or (B) the Excluded Assets;

“Excluded Inventory” means any item of merchandise located at, in transit to or allocated to a Non-Purchased Location;

“GAAP” means generally accepted accounting principles as defined in the CPA Canadian Handbook – Accounting Part II, as applicable to private enterprises, including those approved from time to time by the Canadian Accounting Standards Board or any successor body thereto;

“General Partner” means Mastermind GP Inc., the general partner of Seller;

“Governmental Authority” means any domestic, foreign or multinational (a) federal, provincial, state, territorial, regional, municipal, local or other government, (b) governmental or quasi governmental authority of any nature, including any governmental ministry, agency, branch, department, court, commission, board, tribunal, bureau or instrumentality, or (c) body exercising or entitled to exercise any administrative, executive, judicial, legislative, regulatory or taxing authority or power of any nature;

“GST/HST” means all Taxes payable under the ETA;

“Head Office/Distribution Center” means Seller’s head office and distribution center located at 415 Milner Ave, Scarborough, Ontario;

“Illustrative Net Debt Statement” means the statement attached hereto as Exhibit B;

“Initial Order” means an order of the Court made November 23, 2023, as may be amended and restated, among other things, granting Seller protection under the CCAA and appointing the Monitor;

“Intellectual Property” means (a) all intellectual and/or industrial property in any jurisdiction, including patents, copyrights, trademarks, industrial designs, trade names, brand names, business names and service marks (including registrations of and applications for all of the foregoing in any jurisdiction and renewals, divisions, extensions and reissues, where applicable, relating thereto), (b) all proprietary information, including trade secrets, know how, instruction manuals, research data, drawings and designs, formulae, processes, technology, and (c) all other intellectual property in any jurisdiction and in whatever form or format;

“Inventory Payment” has the meaning set out in Section 3.1(a)(i)(C);

“KERP” means Seller’s key employee retention plan, pursuant to an order of the Court, under which Seller will compensate certain specified head office Employees for remaining in Seller’s employment to assist with, without limitation, the completion of the Transactions contemplated herein and the liquidation of Seller’s stores designated as Non-Purchased Locations;

"Laws" means all applicable federal, provincial, state, regional, territorial, municipal or local laws, statutes, treaties, codes or ordinances, whether domestic or foreign, of any Governmental Authority, including applicable Regulations and Orders;

"Liability" means any liability or obligation of any nature, whether known or unknown, accrued, absolute, contingent or otherwise, and whether due or to become due;

"Monitor" has the meaning set out in the recitals to this Agreement;

"Monitor's Certificate" means the certificate contemplated in the Approval and Vesting Order and delivered by the Monitor and filed with the Court by the Monitor certifying that the Monitor has received written confirmation from the Parties that all conditions of Closing have been satisfied or waived (if permissible) by the applicable Party and the Purchase Price has been satisfied in accordance with Section 3.4;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

"Non-Purchased Location" means each of Seller's locations designated as a 'Non-Purchased Location' on Schedule 1.1(b), as such Schedule 1.1(b) may be amended in accordance with Section 2.5;

"Non-Transferred Employees" means Employees that are not Transferred Employees;

"Orders" means all applicable judgments, orders, writs, injunctions, rulings, decisions, decrees, awards, assessments and binding directives, protocols, policies, standards and guidelines rendered by any Governmental Authority;

"Organizational Documents" of any Entity means, as applicable, the articles, by laws, partnership agreement, limited partnership agreement, limited liability company agreement, shareholders' agreement and/or other governing or constitutional document(s) of such Entity;

"Outside Date" has the meaning set out in Section 9.1(a)(i);

"Parties" means Seller and Buyer, and **"Party"** means Seller or Buyer;

"Payroll Source Deductions" means all amounts collected by Seller on account of Taxes, contributions, wages, premiums, benefits or other deductions in respect of Employees or former employees of the Seller and required to be remitted to the relevant Governmental Authorities;

"Permitted Encumbrances" means:

- (a) in respect of immovable and real property, servitudes, easements, restrictions, rights of way and other similar rights, provided they are not of such nature as to materially adversely affect the use or value of the immovable or real property subject thereto;
- (b) in respect of immovable and real property, the reservations in any original grants from the Crown of any immovable and real property or interest therein that do not materially adversely affect the use or value of the immovable or real property subject thereto; and
- (c) the specific Encumbrances to be listed as Permitted Encumbrances in the Approval and Vesting Order;

"Person" is to be construed broadly and includes any individual, corporation, legal person, partnership, limited partner, firm, joint venture, syndicate, association, trust, trustee, limited liability company, unincorporated organization, trust company, Governmental Authority or any other form of entity or organization;

"Personal Information" means any information in the possession or control of Seller about an identifiable individual, other than the business address or business telephone number of an Employee;

"Petty Cash" has the meaning set out in Section 2.1(a);

[REDACTED]

"Priority Payables" means: (a) those priority payments prescribed under subsections 6(5) and 6(6) of the CCAA; (b) any amount owing by Seller for unpaid wages (excluding termination pay or severance pay) to an Employee or former employee of Seller accrued between the Filing Date and the Closing Date; (c) any amount owing by Seller for accrued vacation pay to an Employee or former employee of Seller as of the Time of Closing, (d) any unremitted Payroll Source Deductions; (d) all obligations of Seller incurred with the consent of the Monitor between the Filing Date and the Closing Date, other than termination pay or severance pay owing to Employees or former employees of Seller; (e) any amount owing by Seller in respect of obligations secured by the Court Ordered Charges (without duplication to amounts otherwise satisfied above); and (f) all Liabilities of Seller in respect of portions of the Discretionary Bonus Pool that have been awarded but not paid to Employees or former employees of Seller as of the Time of Closing.

[REDACTED]

[REDACTED]

[REDACTED]

"Privacy Laws" means all applicable Laws governing the collection, use, disclosure and retention of Personal Information, including the *Personal Information Protection and Electronic Documents Act* (Canada);

"Proceeding" means any action, suit, appeal, Claim, application, Order, investigation, proceeding, grievance, arbitration or alternative dispute resolution process before or by any Governmental Authority, arbitrator, arbitration board or mediator;

"Purchase Price" has the meaning set out in Section 3.1;

"Purchased Assets" has the meaning set out in Section 2.1;

"Purchased Inventory" has the meaning set out in Section 2.1(d);

"Purchased IP" has the meaning set out in Section 2.1(j);

"Purchased Locations" means, subject to Section 2.5, the Head Office/Distribution Center and the Purchased Stores;

"Purchased Stores" means Seller's stores designated as 'Purchased Locations' on Schedule 1.1(b), as such Schedule 1.1(b) may be amended in accordance with Section 2.5;

"Regulations" means all regulations, rules, subordinate legislation and other statutory instruments having the force of law promulgated under or pursuant to any Laws;

"Replacement Plans" has the meaning set out in Section 4.1(d);

"Representatives" means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, lawyers, accountants and other agents of such Person;

"Retained Liabilities" has the meaning set out in Section 2.3(c);

"Schedules" has the meaning set out in Section 1.7;

"Secured Debt" means all indebtedness, liabilities and obligations (i) owing by Seller, as borrower, under the CIBC Credit Agreement, and (ii) owing by Seller under the Buyer Notes, in each case, as the same may be amended, amended and restated or supplemented from time to time, and any security or other documents or instruments granted or entered into in connection therewith to the agents and lenders thereunder, together with all accrued and accruing interest, fees, costs and expenses thereunder;

"Seller" has the meaning set out in the recitals to this Agreement, and includes, where the context requires, the General Partner, when acting in its capacity as the general partner of Seller;

"Subordination Agreement" means the subordination agreement to be entered into by Buyer on the Closing Date, pursuant to which Buyer agrees to postpone and subordinate its right of payment under the Buyer Notes to the prior payment in full of the unsecured debt payable by Seller to its unsecured creditors, in form and substance satisfactory to Seller and Buyer, acting reasonably;

"Tax Act" means the *Income Tax Act* (Canada);

"Taxes" means any federal, provincial, territorial, state or local income, goods and services, harmonized sales, value added, corporation, land transfer, licence, payroll, excise, sales, use, capital, withholding or other tax, levy, duty, assessment, reassessment or other charge of any kind whatsoever, whether direct or indirect, including any interest and penalty or other addition to or on any of the foregoing, whether disputed or not, imposed by a Governmental Authority, and includes Canada Pension Plan and employment insurance premiums;

"Third Party Consents" means the consents, approvals and/or authorizations as may be required for the assignment by Seller of the Assumed Real Property Leases, the Assumed Contracts, the Purchased IP and the Assumed Authorizations to Buyer from any third-party, including any Governmental Authority;

"Time of Closing" means 10:00 a.m. on the Closing Date, or such other time on the Closing Date as Seller and Buyer may agree;

"Transactions" means, collectively, the transactions contemplated by this Agreement;

"Transfer Documents" means all customary deeds, assignments, assumption agreements, bills of sale and other conveyancing documents, in form and substance acceptable to Buyer and Seller, each acting reasonably, sufficient to transfer the various categories of Purchased Assets to Buyer on an "as is where is" basis consistent with the terms of this Agreement and the Approval and Vesting Order, including specific assignments of all the right, title and interest of Seller in and to the Intellectual Property as may be required for registration purposes;

"Transfer Taxes" has the meaning set out in Section 3.10;

"Transferred Employees" has the meaning set out in Section 4.1(c); and

"Unsaleable Inventory" means any item of merchandise that is not first quality or not saleable in the ordinary course due to a defect rendering it not first quality.

1.2 Rules of Construction

Except as may be otherwise specifically provided in this Agreement and unless the context otherwise requires, in this Agreement:

- (a) the terms "Agreement", "this Agreement", "hereto", "hereof", "herein", "hereby", "hereunder" and similar expressions refer to this Agreement in its entirety and not to any particular provision hereof;
- (b) references to an "Article", "Section" or "Schedule" followed by a number or letter refer to the specified Article or Section of or Schedule to this Agreement;
- (c) the provision of a table of contents, the division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
- (d) words importing the singular number only shall include the plural and vice versa and words importing the use of any gender shall include all genders;

- (e) the word “including” is deemed to mean “including without limitation”;
- (f) the words “the aggregate of”, “the total of”, “the sum of” or phrase of similar meaning means “the aggregate”, “the total” or “the sum”, without duplication, of;
- (g) any reference to any Contract (including this Agreement) means such Contract as amended, modified, replaced or supplemented from time to time;
- (h) all dollar amounts refer to Canadian dollars;
- (i) any reference to any statute includes all Regulations made under or in connection with that statute, as amended, modified, replaced or supplemented from time to time, and any reference to a specific provision of any statute or Regulation also refers to any successor provision thereto of like or similar effect;
- (j) unless otherwise specified, any reference in this Agreement to the Tax Act or to a provision thereof includes a reference to any applicable corresponding provincial or territorial Tax Laws or to the counterpart provisions thereof;
- (k) any time period within which a payment is to be made or any other action is to be taken hereunder shall be calculated excluding the day on which the period commences and including the day on which the period ends;
- (l) all references to times of the day are to times of the day in Toronto, Ontario; and
- (m) whenever any payment is required to be made, action is required to be taken or period of time is to expire on a day other than a Business Day, such payment shall be made, action shall be taken or period shall expire on the next following Business Day.

1.3 Entire Agreement

This Agreement, together with the Confidentiality Agreement and the Transfer Documents, constitute the entire agreement between the Parties with respect to the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether written or oral. There are no conditions, covenants, agreements, representations, warranties or other provisions, express or implied, collateral, statutory or otherwise, relating to the subject matter of this Agreement except as provided in this Agreement, the Confidentiality Agreement and the Transfer Documents. In the event of any conflict or inconsistency between this Agreement, the Confidentiality Agreement and any Transfer Document, the provisions contained in this Agreement shall prevail to the extent of such conflict or inconsistency.

1.4 Time of Essence

Time shall be of the essence of this Agreement.

1.5 Governing Law and Submission to Jurisdiction

(a) This Agreement shall be interpreted and enforced in accordance with, and the respective rights and obligations of the Parties shall be governed by, the Laws of the Province of Ontario and the federal Laws of Canada applicable in that province.

(b) Each of the Parties irrevocably and unconditionally (i) submits to the exclusive jurisdiction of the courts of the Province of Ontario over any action or proceeding arising out of or relating to this Agreement, (ii) agrees to commence such an action or proceeding in Toronto, Ontario, and to cooperate and use its commercially reasonable efforts to bring the action or proceeding before the Court, (iii) waives any objection that it might otherwise be entitled to assert to the jurisdiction of such courts and (iv) agrees not to assert that such courts are not a convenient forum for the determination of any such action or proceeding.

1.6 Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, all other provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the Transactions is not affected in a manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the Transactions are fulfilled to the extent possible.

1.7 Schedules

The following schedules (the “**Schedules**”) are attached to and form part of this Agreement:

<u>Schedule</u>	<u>Description</u>
Schedule 1.1(a)	- List of Buyer Notes
Schedule 1.1(b)	- Purchased Locations and Non-Purchased Locations
Schedule 2.1(h)	- Assumed Contracts
Schedule 2.1(i)	- Assumed Authorizations
Schedule 2.1(j)	- Intellectual Property
Schedule 2.1(k)	- Business and Domain Names
Schedule 2.2(l)	- Excluded Assets
Exhibit A	- Form of Approval and Vesting Order

ARTICLE 2 PURCHASE AND SALE

2.1 Purchased Assets

Subject to the terms and conditions of this Agreement, the Approval and Vesting Order and any applicable CCAA Assignment Order, at the Time of Closing, Seller shall sell, assign and transfer to Buyer, and Buyer shall purchase from Seller, all right, title and interest of Seller in and to the following property and assets (collectively, the **"Purchased Assets"**):

- (a) Petty Cash. Petty cash of Seller physically located in the Purchased Locations (the **"Petty Cash"**);
- (b) Accounts Receivable. Accounts receivable, trade accounts, notes receivable, book debts, and other debts due or accruing due to Seller and related to the Business (the **"Accounts Receivable"**);
- (c) Leased Real Property. Subject to Section 2.4 and any change in the Purchased Locations in accordance with Section 2.5, the leases and other agreements to occupy the premises for the Purchased Locations entered into by, or assigned in favour of Seller, together with all purchase options, options to lease, registered short form leases or caveats, prepaid rents, security deposits, rights to appurtenances and improvements, easements, licenses and permits, including any governmental authorizations relating thereto and all leasehold improvements thereon, and excluding, for greater certainty, any such lease or agreement in respect of any Non-Purchased Location (collectively, the **"Assumed Real Property Leases"**);
- (d) Inventories. All previously unsold inventories manufactured by Seller or purchased by Seller from third party vendors (including inventory at, or in transit from, a third-party warehouse), including raw materials, work-in-process and packaging materials and all finished goods inventory of Seller, excluding Excluded Inventory (collectively, the **"Purchased Inventory"**);
- (e) Equipment, Fixtures and Furniture. All equipment, fixtures, furniture, furnishings, accessories and other fixed assets located at the Purchased Locations and the interest of Seller in any equipment, fixtures, furniture, furnishings, accessories and other fixed assets held under lease or title retention agreement that are located at the Purchased Locations;
- (f) Prepaid Expenses. All deposits and prepaid expenses related to the Purchased Assets or the Purchased Locations (the **"Prepaid Expenses"**);
- (g) Tax Refunds. All GST/HST or any other sales tax refund amounts accruing to Seller prior to the Closing Date (**"Tax Refunds"**);
- (h) Assumed Contracts. Subject to Section 2.4, all rights of Seller under the Contracts described in Schedule 2.1(h) together with any other Contract identified by Buyer in a list delivered to Seller in writing prior to the Closing Date and agreed to in writing by Seller (collectively, the **"Assumed Contracts"**);

- (i) Authorizations. Subject to Section 2.4, all Authorizations identified in Schedule 2.1(i) (which Schedule may be amended prior to the Closing Date with the mutual consent of the Parties), to the extent they are transferrable (collectively, the **"Assumed Authorizations"**);
- (j) Intellectual Property. Subject to Section 2.4, all rights of Seller to the Intellectual Property used or held for use by Seller in the Business (the **"Purchased IP"**), including all registered Intellectual Property of Seller described in Schedule 2.1(j);
- (k) Business and Domain Names. All rights of Seller to all trade names, business names and domain names and any derivation thereof or any trademarks or trade names incorporating such business names, including the domain names and business names listed on Schedule 2.1(k);
- (l) Information Systems. All software, hardware, telecommunications, network connections, peripherals and related communication and technology infrastructure (excluding communication infrastructure that is generally accessible by the public) owned by Seller and used in the Business, including all rights of Seller under licences and other agreements or instruments relating thereto, all network or Internet Protocol addresses or locators, including IPv4 and IPv6 addresses, Uniform Resource Locators (URLs) and media access control (MAC) addresses used by Seller in the conduct of the Business, and all telephone numbers used in the Purchased Locations and any and all keys, passwords and other access protocols relating thereto, excluding any such software, hardware, telecommunications, network connections, peripherals and related communication and technology infrastructure located at and used solely by the Non-Purchased Locations;
- (m) Books and Records. All Books and Records, but excluding those described in Section 2.2(e);
- (n) Rights under Insurance. All claims, actions or other rights Seller may have for insurance coverage under any past or present policies and insurance contracts or agreements insuring the Purchased Assets, the Purchased Locations or the Business, but, for greater certainty excluding any claims, actions or other rights that Seller may have under the Excluded Insurance Claims;
- (o) Express Consents under Privacy and Anti Spam Law. All express consents obtained by Seller under CASL, all Privacy Laws and all applicable anti spam Laws from any Person to (i) send or cause to be sent an electronic message to such Person, (ii) alter or cause to be altered the transmission data in an electronic message so that the message is delivered to a destination other than or in addition to that specified by such Person, (iii) install or cause to be installed a computer program on such Person's computer system or, having so installed or cause to be installed a computer program, to cause an electronic message to be sent from that computer system, or (iv) collect, use and/or disclose any Personal Information of such Person; and
- (p) Goodwill. All goodwill related to the Purchased Assets and the Business, together with the exclusive right for Buyer to represent itself as carrying on the Business in succession to Seller and the right to use any words indicating that the Business is

so carried on, including the exclusive right to use the names and styles currently used by Seller, or any variation thereof, as part of the name or style under which the Business or any part thereof is carried on by Buyer.

2.2 Excluded Assets

The Purchased Assets shall not include any of the following property and assets (collectively, the “**Excluded Assets**”):

- (a) Cash;
- (b) Excluded Inventory;
- (c) all insurance policies and insurance contracts or agreements insuring the Purchased Assets or the Business;
- (d) the Excluded Insurance Claims;
- (e) any equity interests in any other Person;
- (f) income tax instalments paid by Seller and the right to any refund of income taxes;
- (g) personnel records that Seller is required by Law to retain in its possession (copies of which have been or will be made available to Buyer prior to the Closing Date), minute books, share registers and Tax records of Seller, and all communications, documents and other materials involving attorney client confidences between Seller and its attorneys, including those relating to the Transactions;
- (h) the rights of Seller under this Agreement, the Transfer Documents and each other document and agreement contemplated under this Agreement and the Transfer Documents;
- (i) the rights of Seller under the documents creating and governing the Secured Debt;
- (j) any Contract, lease for real property, Intellectual Property and Authorization that is not assignable as contemplated in Section 2.4;
- (k) any Contracts relating to Retained Liabilities; and
- (l) the assets, property and Contracts identified in Schedule 2.2(l), provided that Buyer may add any asset, property or Contract to such list on or prior to December 11, 2023 by delivery of an updated Schedule 2.2(l) in writing to Seller.

2.3 Assumption of Certain Liabilities by Buyer

(a) Subject to the provisions of this Agreement, Buyer agrees to assume, pay, discharge, perform and fulfil, from and after the Time of Closing, only the following Liabilities of Seller (collectively, the “**Assumed Liabilities**”):

- (i) all Liabilities of Seller under the Assumed Contracts, Assumed Real Property Leases and Purchased IP accrued from and after the Time of Closing;
- (ii) all Liabilities of Seller under the Assumed Authorizations;
- (iii) all Cure Costs, to the extent not paid at Closing;
- (iv) all Priority Payables incurred prior to the Time of Closing to the extent such amounts, or any portion thereof to the extent of that portion, are not accounted for in the Priority Payables Buyer Contribution or in Section 3.4(c)(ii);
- (v) all Liabilities of Seller with respect to the Purchased Assets from and after the Time of Closing, including all Liabilities and services to be rendered in connection with the Business solely in relation to the Purchased Assets accrued from and after the Time of Closing; and
- (vi) all Liabilities of Seller relating to the Transferred Employees, accrued from and after the Time of Closing.

(b) Notwithstanding anything to the contrary in Section 2.3(a), Assumed Liabilities exclude the following Liabilities of Seller:

- (i) all Liabilities of Seller for Non-Transferred Employees, other than (i) the Assumed Liabilities described in Section 2.3(a)(iv) and (ii) any Discretionary Bonus Pool payments that are Assumed Liabilities;
- (ii) all Liabilities related to any Excluded Assets, including any Contracts that form part of the Excluded Assets; and
- (iii) Encumbrances, other than Permitted Encumbrances.

(c) All Liabilities of Seller that are described in Section 2.3(b), and all other Liabilities of Seller, whether or not incurred in connection with the Business, that are not specifically listed as Assumed Liabilities in Section 2.3(a) are to be retained by Seller and are referred to as the **"Retained Liabilities"**.

2.4 Third Party Consents

(a) Notwithstanding anything contained in this Agreement or elsewhere, Buyer will not assume and will have no obligation to discharge any debt, liability or obligation under any Assumed Contract, Assumed Real Property Lease, Purchased IP or Assumed Authorization which is not assignable or assumable in whole or in part without a Third Party Consent, unless such Third Party Consent or, as applicable, a CCAA Assignment Order, has been obtained.

(b) The Parties shall cooperate and each use commercially reasonable efforts to obtain all Third Party Consents prior to the sale approval motion, provided that Seller shall not be required to pay any amount in order to obtain a Third Party Consent.

(c) If any Third Party Consent cannot be obtained, Seller covenants to make a motion to the Court prior to the Time of Closing for a CCAA Assignment Order in respect of the Assumed Contracts, Assumed Real Property Leases, Purchased IP and Assumed Authorizations for which Third Party Consents were not obtained.

(d) If, in Buyer's view, additional motions for a CCAA Assignment Order are required beyond that contemplated in Section 2.4(c), such motions shall be brought by Buyer at its own cost.

(e) Any monetary defaults required to be satisfied in connection with a CCAA Assignment Order shall be for the account of and payable by Buyer.

2.5 Purchased Stores

At any time prior to [REDACTED] Buyer may (i) change the designation of any Purchased Store to a Non-Purchased Location by delivery of an updated Schedule 1.1(b) in writing to Seller and (ii) designate that the Head Office/Distribution Center is not a Purchased Location by delivery of a notice in writing to such effect to Seller. [REDACTED]

[REDACTED] Notwithstanding any provision of this Agreement, at no time shall the number of Purchased Stores be less than 40.

ARTICLE 3 PURCHASE PRICE AND RELATED MATTERS

3.1 Purchase Price

- (a) The aggregate purchase price (the "**Purchase Price**") payable by Buyer to Seller in consideration for the Purchased Assets shall be an amount equal to the following, in each case if applicable, as calculated in accordance with (i) the Annual Statement Consistent Policies; or (ii) to the extent not inconsistent with the Annual Statement Consistent Policies, GAAP), provided that the calculation of Purchase Price shall be made in reference to the Illustrative Net Debt Statement and, for the avoidance of doubt, if there is any dispute or inconsistency between the calculation of the Purchase Price in this Agreement and on the Illustrative Net Debt Statement, the Illustrative Net Debt Statement is paramount:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

■	[REDACTED]	
	[REDACTED]	
■	[REDACTED]	
■	[REDACTED]	
■	[REDACTED]	
■	[REDACTED]	
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■	[REDACTED]	
	[REDACTED]	
	[REDACTED]	
■	[REDACTED]	
■	[REDACTED]	
■	[REDACTED]	

3.2 Inventory Check

(a) Buyer may, at its expense, engage a third party inventory valuation expert (the “**Valuation Expert**”) in consultation with the Monitor to conduct a spot check of at least 2% of the inventory of Seller (the “**Initial Spot Check**”). The Initial Spot Check shall be conducted on or around January 7, 2024 and shall verify the accuracy of Seller’s daily inventory report labelled “INV001” as of the close of business on the day prior to the date of the conduct of the spot check. In conducting the Initial Spot Check, the Valuation Expert shall randomly select the inventory to be checked and shall be restricted to confirming that the inventory set out in Seller’s daily inventory report labelled “INV001” is actually held by Seller and that the inventory set out in the report is not Unsaleable Inventory (any inventory that is not actually held by Seller or that is Unsaleable Inventory is referred to as “**Missing Inventory**”).

(b) If the Valuation Expert determines that Missing Inventory in respect of the Initial Spot Check constitutes 5% or greater of the inventory spot checked by the Valuation Expert (based upon the value of the inventory set out in Seller’s applicable daily inventory report), Buyer shall instruct the Valuation Expert to conduct a subsequent spot check of at least 10% of the inventory of Seller within two Business Days of the Initial Spot Check (the “**Final Spot Check**” and, together with the Initial Spot Check, the “**Spot Checks**”), which Final Spot Check shall be conducted in the same manner set out in Section 3.2(a) such that it applies to the Final Spot Check, *mutatis mutandis*. If the Valuation Expert determines that Missing Inventory in respect of the Final Spot Check constitutes 5% or greater of the inventory spot checked by the Valuation Expert (based upon the value of the inventory set out in Seller’s applicable daily

inventory report) (the percentage of such Missing Inventory being the “**Missing Inventory Percentage**”), the Inventory Payment shall be adjusted by a percentage equal to 100% minus the Missing Inventory Percentage (the “**Missing Inventory Adjustment**”). If the Missing Inventory Percentage is less than 5%, the “**Missing Inventory Adjustment**” shall be 100%.

(c) Buyer shall share the report prepared by the Valuation Expert in respect of the Spot Checks following receipt. Seller shall furnish reasonable access to the Valuation Expert during normal business hours to the Purchased Locations to allow the Valuation Expert to complete the Spot Checks.

3.3 Estimated Closing Date Statement

Not later than three Business Days prior to the Closing Date, in consultation with the Monitor, Seller shall deliver to Buyer a written statement, together with reasonable supporting documentation (the “**Estimated Closing Date Statement**”), containing an estimate of the Purchase Price, components thereof and the Closing Cash Payment. Buyer shall prepare the Estimated Closing Date Statement in a manner that ensures no duplication or double counting of any assets, liabilities or adjustments and provide reasonable supporting documentation and detail, including documentation with respect to any calculations set forth on the Estimated Closing Date Statement and an itemized list of the Priority Payables. Seller shall provide Buyer with reasonable access to the books and records of Seller to verify the accuracy of such estimate, and Seller shall consider in good faith any comments proposed by Buyer. Any adjustments to the Closing Cash Payment prior to Closing must be mutually agreed to in writing by Seller, Buyer and Monitor.

3.4 Satisfaction of Purchase Price

(a) On the date hereof, Buyer shall pay [REDACTED] to the Monitor in escrow on behalf of Seller as a deposit in respect of the Purchase Price.

(b) The Purchase Price shall be paid and satisfied as follows:

(i) at the Time of Closing:

(A) Monitor shall release the Deposit from escrow and pay the Deposit to Seller;

(B) Buyer shall pay to Seller an amount equal to:

(I) [REDACTED]

(II) [REDACTED]

(C) [REDACTED] of the Purchase Price representing the BH Payment shall be set off against [REDACTED] principal amount of the Buyer Notes, in satisfaction of such portions of the Purchase Price and the Buyer Notes; and

(D) Buyer shall assume the Assumed Liabilities.

- (ii) on the Adjustment Date, Buyer or Seller, as the case may be, shall pay the Adjustment Amount in accordance with Section 3.8.

(c) The Parties acknowledge and agree that immediately following the Closing, in accordance with the Illustrative Net Debt Statement:

- (i) the CIBC Debt will be paid in full out of Cash on hand and, to the extent necessary, any proceeds received by Seller at the Time of Closing pursuant to Section 3.4(b)(i)(A) and 3.4(b)(i)(B); and

■ [REDACTED]

3.5 Payments; Deposit

(a) The payment of the Deposit to the Monitor in accordance with Section 3.4(a) on the date hereof shall be made by wire transfer of immediately available funds to, or as directed by, the Monitor on or prior to the date hereof.

(b) The payment of the cash amounts in Sections 3.4(b) at the Time of Closing or on the Adjustment Date shall be made by wire transfer of immediately available funds to, or as directed by, the applicable Party prior to the Time of Closing or the Adjustment Date.

(c) The Deposit shall be held by the Monitor in escrow and shall be released in accordance with Section 3.4(b)(i)(A) or 9.2(a), as applicable.

3.6 Closing Date Statement

(a) As soon as practicable following the Closing Date, and in any event no later than 45 days after the Closing Date, Buyer shall prepare or cause to be prepared, at Buyer's expense, and deliver to Seller and Monitor a determination of the Purchase Price (the "**Closing Date Statement**"). Buyer shall prepare the Closing Date Statement in a manner that ensures no duplication or double counting of any assets, liabilities or adjustments and provide reasonable supporting documentation and detail with respect to any calculations set forth on the Closing Date Statement.

(b) Following receipt of the Closing Date Statement, Seller will have 22 days to verify the accuracy of the Closing Date Statement and the calculations therein (the "**Review Period**").

(c) During the Review Period, Buyer shall provide Monitor, Seller and Seller's accountants and advisors with access, on reasonable request, and during normal business hours to: (i) the Books and Records and all working papers of Buyer created in connection with the preparation of the Closing Date Statement and the calculations therein; and (ii) the individuals responsible for the preparation of the Closing Date Statement.

(d) Each Party shall be responsible for its own fees and expenses, including the fees and expenses of its accountants, auditors and other professional advisors, in preparing, reviewing and settling, as the case may be, the Closing Date Statement and the calculation therein.

(e) Notwithstanding the timelines set out in this Section 3.6, the Parties agree to work expeditiously and in good faith to finalize the Closing Date Statement as soon as practicable following the Closing Date.

3.7 Acceptance or Dispute of the Closing Date Statement

(a) Seller may, prior to the end of the Review Period, object in good faith to any item on the Closing Date Statement and the calculations therein by delivering to Buyer a written notice of the objection (the “**Notice of Objection**”). The Notice of Objection must set out in reasonable detail the reasons for Seller’s objection, the amount in dispute and Seller’s calculation of that amount. If Seller does not object to any item on the Closing Date Statement and the calculation therein, Seller may deliver a notice to Buyer to that effect (the “**Notice of Acceptance**”) and upon delivery thereof, Buyer’s calculation of the Purchase Price will be deemed to be final and binding for purposes of the adjustments referred to in Section 3.8. If Seller does not deliver a Notice of Objection or Notice of Acceptance to Buyer prior to the end of the Review Period, Seller will be deemed to have delivered a Notice of Acceptance to Buyer on the last day of the Review Period and Buyer’s calculation of the Purchase Price will be deemed to be final and binding for purposes of the adjustments referred to in Section 3.8.

(b) If Seller delivers a Notice of Objection in accordance with Section 3.7(a), Seller and Buyer shall work expeditiously and in good faith to resolve all of the items in dispute set out in the Notice of Objection within 10 days following delivery of the Notice of Objection. Any items in dispute that are not resolved by the end of that 10 day period will be submitted by Seller and Buyer for final determination to the Court. Each Party shall be responsible for its own fees and expenses relating to the submission and presentation of a dispute to the Court.

3.8 Adjustments

(a) The amount by which the Purchase Price, as finally determined in accordance with Section 3.7, is greater than or less than the Estimated Closing Price is referred to as the “**Adjustment Amount**”.

(b) If the Purchase Price, as finally determined in accordance with Section 3.7, is greater than the Estimated Closing Price, on the Adjustment Date, Buyer shall pay the Adjustment Amount to Seller or as it may direct.

(c) If the Purchase Price, as finally determined in accordance with Section 3.7, is less than the Estimated Closing Price, on the Adjustment Date, Seller shall pay the Adjustment Amount to Buyer or as it may direct; provided that, the Adjustment Amount payable by Seller under this Section 3.8(c) shall not exceed the Estimated Closing Price.

(d) For greater certainty, from time to time after the Closing Date:

- (i) the Monitor may pay from the Closing Cash Payment, if any, amounts required to satisfy the Priority Payables at its sole discretion and without further authorization from Seller or Buyer. For greater certainty, any unused portion of the Priority Payables Buyer Contribution after payment or reservation for all Priority Payables, as determined by the Monitor, shall be transferred by the Monitor to Buyer;

[REDACTED]

[REDACTED]

(e) Notwithstanding the foregoing, the Assumed Liabilities shall not be taken into account in determining the Adjustment Amount.

3.9 Allocation of Purchase Price

Seller and Buyer agree to prepare a statement setting out the allocation the Purchase Price among the Purchased Assets, by province, on or prior to the Closing Date in such manner as determined by Seller and Buyer, acting reasonably and, if applicable, to subsequently adjust such allocation taking into consideration any Adjustment Amount or other adjustments when available, and to report the sale and purchase of the Purchased Assets for all federal, provincial and local tax purposes in a manner consistent with such allocation.

3.10 Transfer Taxes

All amounts payable by Buyer to Seller pursuant to this Agreement do not include any value-added, goods and services, harmonized sales, sales, retail, transfer, use, consumption, multi-staged, personal property, customs, excise, stamp, land transfer, or similar taxes, duties, or charges (including GST/HST) (collectively "**Transfer Taxes**") and all Transfer Taxes payable on the transfer, sale, conveyance, assignments, delivery of the Purchased Assets pursuant to Section 2.1 are the responsibility of and for the account of Buyer. Where such Transfer Taxes payable by Buyer are collectible by Seller by Law or by the administration thereof, then Buyer shall timely pay such Transfer Taxes to Seller at the Time of Closing, or at such later date as such Taxes may be invoiced by Seller, unless Seller agrees to the making of an election, the application of an exemption or other relief from any such applicable Transfer Taxes, in which case Buyer shall, in lieu of payment of such applicable Transfer Taxes to Seller, deliver to Seller prior to the Closing Date, such certificates, elections, or other documentation required by Law or the administration thereof to substantiate and effect the exemption or relief claimed by Buyer. Otherwise, Buyer shall timely remit such Transfer Taxes to the appropriate Governmental Authority and shall provide notice, and upon written request by Seller, evidence of remittance of such payments. Buyer shall indemnify and hold Seller harmless against and in respect of any and all amounts assessed by any taxing authority in respect of any failure on the part of Buyer to pay any Taxes payable by Buyer in connection with an election, exemption or other relief being denied, or otherwise in connection with the Transactions, including all taxes, penalties and interest.

ARTICLE 4 EMPLOYEE MATTERS

4.1 Employee Matters

(a) Buyer shall deliver a list to Seller identifying Employees to whom offers of employment will be offered, which shall consist of at least 85% of Employees at each

Purchased Store as of the date such list is delivered by Buyer ("**Retention List**"). [REDACTED]

(b) Buyer shall, at least five days prior to the Closing Date, offer employment to all active Employees on the Retention List on terms and conditions of employment that are substantially similar in the aggregate to the terms and conditions of employment of such Employees as in effect with Seller immediately prior to the Closing Date. Buyer's offers shall expressly recognize the prior accumulated service of each of such Employees for all employment related purposes, inclusive of the termination of such employment, including for eligibility, vesting and service credits under the Employee Plans, or any replacement plan, if applicable. Each such offer of employment shall be conditional upon the Closing occurring and be with effect as of the Closing Date.

(c) The Employees who accept Buyer's offer of employment and commence employment with Buyer are collectively referred to as the "**Transferred Employees**".

(d) Buyer will establish effective as of the Closing Date replacement employee plans (the "**Replacement Plans**") for the Transferred Employees. For the purpose of determining the eligibility of a Transferred Employee for membership or benefits under the Replacement Plans: (a) their period of employment shall include employment with both Seller and Buyer and shall be deemed not to have been interrupted at the Time of Closing; and (b) their period of membership shall include membership in both the Employee Plans and the Replacement Plans and shall be deemed not to have been interrupted at the Time of Closing. The Transferred Employees shall be eligible for and begin to accrue benefits under the Replacement Plans as of the Time of Closing in respect of their employment by Buyer.

(e) Seller shall be entitled to pay the Employees the amounts allocated under the KERP prior to the Time of Closing.

(f) Prior to the Time of Closing, Seller shall be entitled to pay the Employees the amounts allocated by Seller under the Discretionary Bonus Pool provided amounts allocated to Employees in respect of a Non-Purchased Location under the Discretionary Bonus Pool shall not be paid to such Employees prior to the earlier of (i) the closing of such Purchased Location and (ii) four Business Days prior to the Closing Date.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Buyer as follows and acknowledges that Buyer is relying on these representations and warranties in connection with the Transactions:

5.1 Organization

Seller is a limited partnership validly existing under the Laws of the Province of Ontario. General Partner is a corporation validly existing under the Laws of the Province of Ontario. Seller, or General Partner, in its capacity as general partner of Seller has the power to own or lease, on behalf of Seller, Seller's property, including the Purchased Assets owned or leased by Seller, to carry on the Business as now being conducted by Seller and, subsequent to

obtaining the Approval and Vesting Order and the CCAA Assignment Order, if applicable, to enter into this Agreement and to perform Seller's obligations under this Agreement.

5.2 Authorization

This Agreement has been duly authorized, executed and delivered by the General Partner, in its capacity as general partner of Seller, and subsequent to obtaining the Approval and Vesting Order and the CCAA Assignment Order, if applicable, is a legal, valid and binding obligation of Seller, enforceable against Seller by Buyer in accordance with its terms.

5.3 No Other Agreements to Purchase

No Person other than Buyer has any written or oral agreement or option or any right or privilege (whether by Law, pre-emptive or contractual) capable of becoming an agreement or option for the purchase or acquisition from Seller of any of the Purchased Assets, other than in connection with the ordinary course operations of Seller or the liquidation of the assets of Seller (taking into account the CCAA Proceedings).

5.4 GST/HST Registration

Seller is registered for the purposes of subdivision d of Division V of the ETA and its registration number is [REDACTED]

5.5 Residency

Seller is a "Canadian partnership" as defined in the Tax Act.

5.6 Competition Act

Neither the book value of the Purchased Assets nor the annual gross revenues from sales generated from such assets exceeds \$93 million, as determined in accordance with the *Competition Act* (Canada) and the regulations thereunder.

ARTICLE 6 REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller as follows and acknowledges that Seller is relying on these representations and warranties in connection with the Transactions:

6.1 Organization

Buyer is a corporation validly existing under the federal laws of Canada and has the corporate power to enter into this Agreement and to perform its obligations under this Agreement.

6.2 Authorization

This Agreement has been duly authorized, executed and delivered by Buyer and is a legal, valid and binding obligation of Buyer, enforceable against Buyer by Seller in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, moratorium, reorganization and other Laws relating to or affecting the enforcement of creditors' rights generally

and the fact that equitable remedies, including the remedies of specific performance and injunction, may only be granted in the discretion of a court.

6.3 No Violation

Neither the execution and delivery by Buyer of this Agreement nor the consummation of the Transactions will, with giving of notice, the lapse of time, or both result in the breach or violation of:

- (a) the Organizational Documents of Buyer or the resolutions of the board of directors (or any committee thereof) of Buyer; or
- (b) any applicable Law.

6.4 Governmental Approvals

Other than the Approval and Vesting Order, the CCAA Assignment Order, if applicable, or the Ancillary Order, if applicable, there is no requirement for Buyer to make any filing with, give any notice to or obtain any certificate, registration or Authorization as a condition to the lawful consummation of the Transactions.

6.5 Litigation

There are no Proceedings existing, pending or, to Buyer's knowledge, threatened against or affecting Buyer that could prohibit, restrict or seek to enjoin the Transactions or any part thereof.

6.6 GST/HST Registration

At the time of Closing, Buyer will be registered for purposes of subdivision d of Division V of the ETA and have provided its registration number to Seller.

6.7 Residency

Buyer is not a non-resident of Canada for the purposes of the Tax Act.

6.8 Brokers

No broker, agent, mandatary or other intermediary is entitled to any fee, commission or other remuneration in connection with the Transactions based upon arrangements made by or on behalf of Buyer.

6.9 Investment Canada Act

Buyer is not a non-Canadian within the meaning of the *Investment Canada Act*.

6.10 Sophisticated Buyer

(a) Buyer is an informed and sophisticated purchaser, and has engaged expert advisors and is experienced in the evaluation and purchase of property and assets and assumption of liabilities such as Purchased Assets and the Assumed Liabilities as contemplated hereunder. Buyer has undertaken such investigations and has been provided with and has

evaluated such documents and information as it has deemed necessary to enable it to make an informed and intelligent decision with respect to the execution, delivery and performance of this Agreement.

(b) At the Time of Closing, Buyer will have the necessary funds to complete the purchase of the Purchased Assets in accordance with this Agreement.

ARTICLE 7 COVENANTS

7.1 Additional Covenants of Seller

Seller covenants and agrees with Buyer as follows:

- (a) Seller shall use commercially reasonable efforts to change, and cause each of its Affiliates to, change its name to a name which does not include the words “Mastermind” or “Mastermind Toys” or any part thereof or any similar words; provided that Buyer acknowledges that any name change cannot take effect until after the Time of Closing. Seller agrees that from and after the Time of Closing (i) neither Seller nor any of its Affiliates will use the words “Mastermind” or “Mastermind Toys” or any part thereof or any similar words, including in all documents and websites, and (ii) Seller will seek an order in the CCAA Proceedings to change the style of cause in the CCAA Proceedings to reflect the change of the name of Seller;
- (b) until the Time of Closing, the inventory of Seller located at Seller’s Head Office/Distribution Center, in transit or any third-party warehouse shall be allocated among the Purchased Stores and the Non-Purchased Locations consistent with Seller’s past practices, in consultation with the Monitor;
- (c) until the Time of Closing, Seller shall furnish Buyer and its Representatives reasonable access to the Purchased Locations and the Purchased Assets at all times during normal business hours, as well as such information within the possession or control of Seller regarding the Purchased Locations and Purchased Assets as Buyer and its Representatives may reasonably request;
- (d) until the Time of Closing, Seller shall provide Buyer and its legal counsel with a copy of any draft order or other draft court materials which Seller intends to file with the Court in connection with this Agreement or the Transactions contemplated thereby at least one (1) business day before service thereof;
- (e) Seller shall use commercially reasonable efforts to fulfill the conditions set out in Section 8.4 and shall cooperate with Buyer in its efforts to cause the satisfaction of the conditions set out in Section 8.5; and
- (f) Seller shall take all action as may be commercially reasonable and appropriate to defend against any appeal of, or motion to vary or similar motion regarding, the Approval and Vesting Order, the CCAA Assignment Order, if applicable, or the Ancillary Order, if applicable.

7.2 Covenants of Buyer

Buyer covenants and agrees with Seller as follows:

- (a) for a period of six years following the Closing Date, Buyer covenants to use reasonable care to preserve the Books and Records of Seller and to permit Seller and its Representatives and successors and assigns, the Monitor and any trustee in bankruptcy access to any such Books and Records that contain information relating to the period prior to the Time of Closing, as Seller and its Representatives and successors and assigns, the Monitor and any trustee in bankruptcy may reasonably request; and
- (b) Buyer shall use commercially reasonable efforts to fulfill the conditions set out in Section 8.5 and shall cooperate with Seller in its efforts to cause the satisfaction of the conditions set out in Section 8.4.

7.3 Confidentiality of Internal Communications

All communications, documents and other materials involving attorney client confidences between Seller and its attorneys that relate in any way to this Agreement, any Transfer Document, the Transactions or, for certainty, any Excluded Asset or Retained Liability, are deemed to be attorney client confidences that belong solely to Seller, and nothing in this Agreement will be construed to grant Buyer access to any such communications, documents or other materials unless otherwise agreed to in writing by Seller.

7.4 Post Closing Use of Personal Information

Buyer's use and disclosure of Personal Information in connection with the conduct of the Business after Closing shall be carried out in compliance with all applicable Laws.

7.5 Tax Elections

(a) If both Parties, acting reasonably, agree that it is available, Buyer and Seller shall jointly elect in the prescribed form under section 22 of the Tax Act, and under any similar provision of any applicable provincial Laws, and Seller shall file such election with Canada Revenue Agency (and other applicable provincial authorities), as to the sale of the accounts receivable and other assets described in section 22 of the Tax Act (or the relevant provincial provision) and to designate in such election an amount equal to the portion of the Purchase Price allocated to such assets pursuant to Section 3.9 as the consideration paid by Buyer therefor.

(b) If both Parties, acting reasonably, agree that it is available, Seller and Buyer shall jointly execute and file an election under subsection 20(24) of the Tax Act, in the manner required by subsection 20(25) of the Tax Act, and the equivalent provisions of any applicable provincial Laws, and Seller shall file such election with Canada Revenue Agency (and other applicable provincial authorities), with respect to the amount paid by Seller to Buyer for assuming future obligations. Seller and Buyer acknowledge that a portion of the Purchased Assets transferred by Seller to Buyer pursuant to this Agreement with a value equal to the amount elected under subsection 20(24) of the Tax Act is being transferred by Seller to Buyer as a payment for the assumption by Buyer of such future obligations.

(c) If both Parties, acting reasonably, agree that it is available, Buyer and Seller shall jointly make the election provided for in paragraph 167(1)(b) of the ETA to have subsection 167(1.1) of the ETA apply to the sale and purchase of the Purchased Assets. Buyer shall file the election in the manner and within the time prescribed by subsection 167(1.1) of the ETA.

7.6 Mandatory Reporting

Each Party agrees to notify the other Party if it determines that any transaction contemplated by this Agreement is required to be reported pursuant to section 237.3 or 237.4 of the Tax Act or sections 1079.8.5 or 1079.8.6 of the *Taxation Act* (Québec) or any other rules of similar effect (the “**Mandatory Reporting Rules**”) or if the Party otherwise intends to file any information returns in connection with this Agreement pursuant to the Mandatory Reporting Rules. Each Party agrees, to the extent possible, to share a draft of any such filing (subject to redactions of solicitor-client privileged information) with the other Party no later than 15 Business Days prior to the due date for such filing and to consider in good faith any changes requested by the other Party prior to the due date to any such filing. Notwithstanding the foregoing, no Party shall be under any obligation not to report a transaction that it determines, acting reasonably, to be subject to a reporting requirement pursuant to the Mandatory Reporting Rules.

7.7 Transition Services

(a) Buyer shall provide, or cause its Affiliates to provide, to Seller following the Closing Date all services and other assistance as may be reasonably required by Seller in order for Seller to complete the administration of the CCAA Proceedings, including in connection with (i) the preparation by Seller of Seller’s financial statements, Taxes and Tax returns, (ii) the completion by Seller of any claims process, (iii) the preparation by Seller of T4 slips and records of employment for Employees and (iv) facilitating payment of Priority Payables (the “**Buyer Services**”).

(b) Seller shall provide, or cause its Affiliates to provide, to Buyer following Closing Date all services and other assistance as may be reasonably required by Buyer in order to complete the Transaction and continued operation of the Business. Including (i) transition of accounts receivables and accounts payables of the Seller to the Buyer’s bank accounts; and (ii) communication with internal and external stakeholders, if requested (“**Seller Services**”, and together with the Buyer Services, the “**Services**”).

(c) The Services shall be provided by each Party to the other Party at no cost. Each Party shall provide all Services directly to the other at a reasonable level of quality, and with a reasonable degree of care, diligence and responsiveness, and in accordance with applicable industry standards. Each Party shall cooperate with each other in all matters relating to the provision and receipt of the Services, including exchanging information.

(d) In all matters relating to the Services, each Party will be solely responsible for the acts of its Representatives, and Representatives of one Party shall not be considered Representatives of any other Party. Except to the extent the Parties otherwise agree in writing, no Party will have any right, power or authority to create any obligation, express or implied, on behalf of any other Party nor shall any Party act or represent or hold itself out as having authority to act as an agent or partner of the other Party, or in any way bind or commit the other Party to any obligations. Subject to the foregoing, nothing in this Section 7.7 is intended to create or constitute a joint venture, partnership, trust or other association of any kind between the Parties or persons referred to herein.

(e) At the request of either Buyer or Seller prior to the Closing Date, the Parties shall use commercially reasonable efforts to enter into a transition services agreement, in form and substance satisfactory to the Parties, acting reasonably and in good faith, to provide for the Services, such other services that may be required for the transition of the Purchased Assets into Buyer's overall operations and to allow for an orderly passing of the Purchased Assets to Buyer and the uninterrupted operations of the Business following Closing, in particular in the event that any Assumed Contracts cover shared services of the Seller and Buyer following Closing.

ARTICLE 8 CLOSING

8.1 Transfer and Closing Mechanics

Subject to compliance with the terms and conditions of this Agreement, the Closing shall take place at the Time of Closing by the electronic exchange of digital copies of the documents, and the taking of the closing steps, contemplated by this Agreement. Unless otherwise agreed, all Closing transactions shall be deemed to have occurred simultaneously at the Time of Closing.

8.2 Closing Deliveries by Seller

At the Closing, Seller shall deliver or cause to be delivered to Buyer, each in form and substance satisfactory to Buyer, acting reasonably:

- (a) a receipt for the payment of the cash payments payable by Buyer on the Closing Date in accordance with Section 3.4(b)(i)(B);
- (b) the Purchased Assets, which shall be delivered *in situ* wherever located as of the Time of Closing;
- (c) a counterpart of each Transfer Document requiring execution by Seller, duly executed by it;
- (d) a certified copy of the issued and entered Approval and Vesting Order;
- (e) a certificate of a senior officer of Seller certifying that the representations and warranties of Seller set out herein are true and correct in all material respects at the Time of Closing (unless they are expressed to be made only as of an earlier fixed date, in which case they need be true and correct only as of such earlier date) and attaching certified copies of the Organizational Documents of Seller and the authorizing resolutions approving the subject matter of this Agreement;
- (f) a payout letter from CIBC in respect of the CIBC Credit Agreement and the guarantee given by Buyer's principals, in form and substance satisfactory to Buyer;
- (g) an acknowledgement addressed to the Monitor dated the Closing Date that each of the conditions precedent in Section 8.5 have been fulfilled, performed or waived as of the Time of Closing;
- (h) an executed copy of the Monitor's Certificate; and

- (i) all other documents required to be delivered by Seller to Buyer pursuant to this Agreement or reasonably necessary to give effect to the Transactions.

8.3 Closing Deliveries by Buyer

At the Closing, Buyer shall deliver or cause to be delivered to Seller, the Purchase Price in accordance with Section 3.4(b) (plus applicable Taxes) and the following, each in form and substance satisfactory to Seller, acting reasonably:

- (a) a counterpart of each Transfer Document requiring execution by Buyer, duly executed by it;
- (b) a certificate of a senior officer of Buyer certifying that the representations and warranties of Buyer set out herein are true and correct in all material respects at the Time of Closing and attaching certified copies of the Organizational Documents of Buyer and the authorizing resolutions approving the subject matter of this Agreement;
- (c) an acknowledgement addressed to the Monitor dated the Closing Date that each of the conditions precedent in Section 8.4 have been fulfilled, performed or waived as of the Time of Closing;
- (d) an executed copy of the Subordination Agreement; and
- (e) all other documents required to be delivered by Buyer to Seller pursuant to this Agreement or reasonably necessary to give effect to the Transactions.

8.4 Conditions of Closing in Favour of Buyer

The purchase and sale of the Purchased Assets is subject to the following terms and conditions for the exclusive benefit of Buyer to be performed or fulfilled at or prior to the Time of Closing and which may be waived in whole or in part by Buyer in writing at any time:

- (a) Representations and Warranties. The representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects at the Time of Closing (unless they are expressed to be made only as of an earlier fixed date, in which case they need be true and correct in all material respects only as of such earlier date);
- (b) Covenants. All of the terms, covenants and conditions of this Agreement to be complied with or performed by Seller at or before the Time of Closing shall have been complied with or performed in all material respects;
- (c) No Bankruptcy. Seller shall not have made, or be deemed to have made, an assignment in bankruptcy under the *Bankruptcy and Insolvency Act* and shall not have obtained an order of the Court binding the Transactions on a trustee in bankruptcy;
- (d) Orders. Each of the Approval and Vesting Order, the CCAA Assignment Order, and the Ancillary Order, shall have been issued, and the operation and effect of such order shall not have been stayed, amended, modified, reversed, waived,

dismissed or appealed (or any such appeal shall have been dismissed with no further appeal therefrom or the applicable appeal periods shall have expired) and no notices of the foregoing shall have been filed at the Time of Closing;

- (e) Initial Order. All stays of proceedings contained in the Initial Order shall have remained in effect as at the Time of Closing except where any such stay is terminated or lifted or amended in a manner which, in Buyer's opinion, acting reasonably, is not prejudicial to Buyer or which does not adversely affect Buyer's rights under this Agreement or in respect of the Purchased Assets;
- (f) Third Party Consents or CCAA Assignment Order. Seller shall have obtained Third Party Consents or a CCAA Assignment Order in respect of at least [REDACTED] of the Assumed Real Property Leases;
- (g) No Action or Proceeding. No legal or regulatory action or proceeding shall be pending or threatened by any Governmental Authority to enjoin, restrict or prohibit the purchase and sale of the Purchased Assets contemplated hereby;
- (h) Injunctions. There shall be in effect no injunction against closing the Transactions entered by a court of competent jurisdiction; and
- (i) Documents. Seller shall have delivered the documents referred to in Section 8.2.

Any of the foregoing conditions may be waived in whole or in part by Buyer in writing without prejudice to any claims it may have for breach of covenant, representation or warranty under this Agreement.

8.5 Conditions of Closing in Favour of Seller

The purchase and sale of the Purchased Assets is subject to the following terms and conditions for the exclusive benefit of Seller, to be performed or fulfilled at or prior to the Time of Closing and which may be waived in whole or in part by Seller in writing at any time:

- (a) Representations and Warranties. The representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects at the Time of Closing (unless they are expressed to be made only as of an earlier fixed date, in which case they need be true and correct only in all material respects as of such earlier date);
- (b) Covenants. All of the terms, covenants and conditions of this Agreement to be complied with or performed by Buyer at or before the Time of Closing shall have been complied with or performed in all material respects;
- (c) Orders. Each of the Approval and Vesting Order, the CCAA Assignment Order, and the Ancillary Order, shall have been issued, and the operation and effect of such order shall not have been stayed, amended, modified, reversed, waived, dismissed or appealed (or any such appeal shall have been dismissed with no further appeal therefrom or the applicable appeal periods shall have expired) and no notices of the foregoing shall have been filed at the Time of Closing;

- (d) No Action or Proceeding. No legal or regulatory action or proceeding shall be pending or threatened by any Governmental Authority to enjoin, restrict or prohibit the purchase and sale of the Purchased Assets contemplated hereby;
- (e) Injunctions. There shall be in effect no injunction against closing the Transactions entered by a court of competent jurisdiction;
- (f) Subordination Agreement. Buyer shall have entered into the Subordination Agreement; and
- (g) Purchase Price and Documents. Buyer shall have made the payments and delivered the documents referred to in Section 8.3.

Any of the foregoing conditions may be waived in whole or in part by Seller in writing without prejudice to any claims it may have for breach of covenant, representation or warranty under this Agreement.

8.6 Monitor's Certificate

When the conditions set out in Sections 8.4 and 8.5 have been satisfied or waived, Buyer and Seller will each deliver to the Monitor written confirmation of same. The Parties acknowledge and agree that the Monitor shall be entitled to deliver to Buyer and Seller, and file with the Court, the executed Monitor's Certificate without independent investigation, upon receiving written confirmation from both Parties (or the applicable Party's counsel) that all conditions of Closing in favour of such Party have been satisfied or waived, and the Monitor shall have no Liability to the Parties in connection therewith. The Closing shall be deemed to have occurred upon delivery by the Monitor of an executed copy of the Monitor's Certificate to Buyer.

ARTICLE 9 TERMINATION

9.1 Termination Rights

(a) Subject to Section 9.2, this Agreement may be terminated by written notice given at or prior to the Time of Closing:

- (i) by either Buyer or Seller if the Closing has not occurred on or before January 31, 2024 (or such later date as the Parties may agree) (the "**Outside Date**"), except that the right to terminate this Agreement under this Section 9.1(a)(i) is not available to the Party who wishes to terminate if the failure of the Closing to occur was due to a breach by such Party of any of its obligations or any of its representations and warranties in this Agreement;
- (ii) by Buyer if (A) any of the conditions in Section 8.4 has not been or is incapable of being satisfied by the Outside Date, except that the right to terminate this Agreement under this Section 9.1(a)(ii) is not available if the failure of such condition to be satisfied was due to a breach by Buyer of any of its obligations or any of its representations and warranties in this Agreement; or (B) Canadian Imperial Bank of Commerce ("**CIBC**") breaches its obligation to forbear from exercising rights under the

guarantee given by Buyer's principals to CIBC or the related forbearance agreement, or CIBC's obligation to support the Transactions, in each case on a date when all of the milestones set forth in such guarantee that are required to have been achieved, have been achieved (other than the requirement to obtain the Court's approval of the Transactions) a "**CIBC Breach**"; or

- (iii) by Seller if any of the conditions in Section 8.5 has not been satisfied or is incapable of being satisfied by the Outside Date, except that the right to terminate this Agreement under this Section 9.1(a)(iii) is not available if the failure of such condition to be satisfied was due to a breach by Seller of any of its obligations or any of its representations and warranties in this Agreement.

(b) This Agreement may be terminated by mutual written agreement of Buyer and Seller (in Seller's case, with the consent of the Monitor).

9.2 Effect of Termination

(a) If this Agreement is terminated pursuant to Section 9.1, all further obligations of the Parties under or pursuant to this Agreement shall terminate without further liability of any Party to the other, except (i) the full amount of the Deposit shall be promptly paid by the Monitor to Seller (and Buyer shall take all steps to cause such payment to be made), unless the termination of the Agreement is (A) due to a material breach by Seller of its obligations hereunder or (B) a CIBC Breach, in which case the full amount of the Deposit shall be promptly returned by the Monitor to Buyer, and (ii) the termination of this Agreement shall not relieve any Party from any liability for any breach of this Agreement occurring prior to termination.

(b) Under no circumstance shall any of the Parties or their Affiliates or their respective Representatives be liable for any special, punitive, exemplary, consequential or indirect damages (including loss of profits) that may be alleged to result, in connection with, arising out of, or relating to this Agreement or the Transactions.

ARTICLE 10 AS IS WHERE IS SALE; SURVIVAL

10.1 As Is Where Is Sale

Notwithstanding any other provision of this Agreement, Buyer acknowledges, agrees and confirms that:

- (a) except for the representations and warranties of Seller set forth in Article 5, it is entering into this Agreement, acquiring the Purchased Assets on an "as is, where is" basis as they exist at the Time of Closing, accepts the Purchased Assets in their state, condition and location as of the Time of Closing except as expressly set forth in this Agreement, and the sale of the Purchased Assets is made without any representation or warranty and at the risk of Buyer;
- (b) it has conducted to its satisfaction such independent searches, investigations and inspections of the Purchased Assets and the Business as it deemed appropriate, and based thereon, has determined to proceed with the Transactions;

- (c) except as expressly stated in Article 5, neither Seller nor any other Person is making, and Buyer is not relying on, any representations, warranties, statements or promises, express or implied, statutory or otherwise, concerning Seller's right, title or interest in or to the Purchased Assets, including with respect to merchantability, physical or financial condition, description, fitness for a particular purpose, suitability for development, title, description, use or zoning, environmental condition, existence of latent defects, quality, quantity or any other thing affecting the Purchased Assets or in respect of any other matter or thing whatsoever, including any and all conditions, warranties or representations expressed or implied pursuant to any applicable Law in any jurisdiction, which Buyer confirms do not apply to this Agreement and are hereby waived in their entirety by Buyer;
- (d) any information regarding or describing the Purchased Assets or the Business in this Agreement (except as set out in Article 5) or in any other agreement or instrument contemplated hereby, is for identification purposes only, is not relied upon by Buyer, and no representation, warranty or condition, express or implied, has or will be given by Seller or any other Person concerning the completeness or accuracy of such information or descriptions except as set out in Article 5; and
- (e) except as otherwise expressly provided in this Agreement, Buyer hereby unconditionally and irrevocably waives any and all actual or potential rights or claims Buyer might have against Seller pursuant to any warranty, express or implied, legal or conventional, of any kind or type, other than those representations and warranties expressly set forth in Article 5. Such waiver is absolute, unlimited, and includes waiver of express warranties, implied warranties, warranties of fitness for a particular use, warranties of merchantability, warranties of occupancy, strict liability and claims of every kind and type, including claims regarding defects, whether or not discoverable or latent, product liability claims, or similar claims, and all other claims that may be later created or conceived in strict liability or as strict liability type claims and rights.

This Section 10.1 shall not merge on Closing. Buyer shall have no recourse or claim of any kind against Seller following the Closing for breach of any representation or warranty.

10.2 Survival

- (a) The representations and warranties of Seller set forth in Article 5 shall not survive the Closing.
- (b) Any provision of this Agreement which contemplates performance or the existence of obligations after the Closing shall not be deemed to be merged into or waived by the execution, delivery or performance of this Agreement or documents delivered in connection herewith or the Closing, but shall expressly survive the execution, delivery and performance of this Agreement, the Closing and the execution, delivery and performance of any and all documents delivered in connection with this Agreement and shall be binding upon the Party or Parties obligated thereby in accordance with the terms of this Agreement.

ARTICLE 11 MISCELLANEOUS

11.1 Disputes

Any dispute arising out of or in connection with this Agreement shall be submitted to and finally resolved by a motion brought before the Court in the CCAA Proceedings.

11.2 Notices

(a) Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be delivered in person, transmitted by email or similar means of recorded electronic communication or sent by major national or international courier service (with same or next day delivery), charges prepaid, addressed as follows:

(i) if to Seller:

Mastermind LP
c/o Birch Hill Equity Partners Management Inc.
4510-81 Bay Street
PO Box 45
Toronto, ON M5J 0E7

Attention: [REDACTED]

Email: [REDACTED]

With a copy to (which copy shall not constitute notice):

Davies Ward Phillips & Vineberg LLP
155 Wellington Street West
Toronto, ON M5V 3J7

Attention: [REDACTED]

Email: [REDACTED]

(ii) if to Buyer:

Unity Acquisitions Inc.
1 Niagara St.,
Toronto, Ontario M5V 1C2

Attention: [REDACTED]

Email: [REDACTED]

With a copy to (which copy shall not constitute notice):

Fasken Martineau DuMoulin LLP
Bay Adelaide Centre
333 Bay St. #2400
Toronto, ON M5H 2T6

Attention:

Email:

(iii) if to Monitor:

Alvarez & Marsal Canada Inc.
Royal Bank Plaza - North Tower
200 Bay St.
Toronto, ON M5J 2J1

Attention:

Email:

With a copy to (which copy shall not constitute notice):

Bennett Jones LLP
100 King St W Suite 3400
Toronto, ON M5X 1A4

Attention:

Email:

(b) Any notice or other communication shall be deemed to have been given and received on the day on which it was delivered (or, if such day is not a Business Day or if delivery is made on a Business Day after 5:00 p.m. at the place of receipt, then on the next following Business Day) or, if sent by courier, on the Business Day following the date on which it was sent.

(c) Either Party may at any time change its address for service from time to time by giving notice to the other Party in accordance with this Section 11.2.

11.3 Monitor's Liability

In addition to all of the protections granted to the Monitor under the CCAA, the Initial Order and any other order of the Court in the CCAA Proceedings, Seller and Buyer acknowledge and agree that the Monitor, acting in its capacity as Monitor of Seller and not in its personal capacity, will have no Liability, in its personal capacity or otherwise, in connection with this Agreement or the Transactions whatsoever.

11.4 Amendments and Waivers

No amendment or waiver of any provision of this Agreement shall be binding on either Party unless consented to in writing by such Party. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

11.5 Successors and Assigns; Assignment

(a) This Agreement shall enure to the benefit of and shall be binding on and enforceable by and against the Parties and their respective successors and permitted assigns.

(b) No Party may assign any of its rights or benefits under this Agreement, or delegate any of its duties or obligations, except with the prior written consent of the other Party.

11.6 Expenses

Each Party shall pay for its own costs and expenses incurred in connection with the negotiation, preparation, execution and performance of this Agreement and the Transactions, including the fees and expenses of legal counsel, financial advisors, brokers, accountants and other professional advisors and fees payable to any Governmental Authorities.

11.7 Consultation

(a) The Parties shall consult with each other before issuing any press release or making any other public announcement with respect to this Agreement or the Transactions and, except as required by applicable Law, the Parties shall not issue any press release or make any public announcement without the prior written consent, which consent shall not be unreasonably withheld or delayed, of the other Party.

(b) Nothing in this Agreement will prevent Seller from making disclosures to its direct or indirect investors or limited partners or potential investors that are obligatory, customarily provided to investors or potential investors in private equity funds or that are consistent with Seller's (or its Affiliates') recent practice, including in respect of the name, history and performance of its investment in the Business.

11.8 Further Assurances

Each of the Parties shall, at all times after the Closing Date and upon any reasonable request of the other, promptly do, execute, deliver or cause to be done, executed and delivered, at the expense of the requesting Party, all further acts, documents and things as may be required or necessary for the purposes of giving effect to this Agreement, including such other instruments of sale, transfer, conveyance, assignment, confirmation, certificates and other instruments as may be reasonably requested in order to more effectively transfer, convey and assign the Purchased Assets and to effectuate the Transactions.

11.9 Counterparts

This Agreement and all documents contemplated by or delivered under or in connection with this Agreement may be executed and delivered in any number of counterparts, with the same effect as if all Parties had signed and delivered the same document, and all counterparts shall be construed together to be an original and will constitute one and the same agreement.

(The remainder of this page is intentionally left blank; signature page follows.)

IN WITNESS WHEREOF this Agreement has been executed by the Parties on the date first above written.

SELLER:

MASTERMIND LP, by its general partner,
MASTERMIND GP INC.

by 

Name: Anna Wu

Title: Director

BUYER:

UNITY ACQUISITIONS INC.

by 

Name: Frank Rocchetti

Title: Vice Chairman

SCHEDULE 1.1(A)
LIST OF BUYER NOTES

The following promissory notes:

- (a) Promissory Note, dated June 11, 2020, made by Mastermind LP by its general partner Mastermind GP Inc. in favour of Birch Hill Equity Partners (US) IV, LP in the principal amount of \$736,627.81.
- (b) Promissory Note, dated June 11, 2020, made by Mastermind LP by its general partner Mastermind GP Inc. in favour of Birch Hill Equity Partners (Entrepreneurs) IV, LP in the principal amount of \$13,182.49.
- (c) Promissory Note, dated June 11, 2020, made by Mastermind LP by its general partner Mastermind GP Inc. in favour of Birch Hill Equity Partners IV, LP in the principal amount of \$500,189.70.
- (d) Promissory Note, dated December 31, 2020, made by Mastermind LP by its general partner Mastermind GP Inc. in favour of Birch Hill Equity Partners (Entrepreneurs) IV, LP in the principal amount of \$720.33.
- (e) Promissory Note, dated December 31, 2021, made by Mastermind LP by its general partner Mastermind GP Inc. in favour of Birch Hill Equity Partners (Entrepreneurs) IV, LP in the principal amount of \$1,318.25.
- (f) Promissory Note, dated January 3, 2023, made by Mastermind LP by its general partner Mastermind GP Inc. in favour of Birch Hill Equity Partners (Entrepreneurs) IV, LP in the principal amount of \$1,318.25.
- (g) Promissory Note, dated December 31, 2020, made by Mastermind LP by its general partner Mastermind GP Inc. in favour of Birch Hill Equity Partners (US) IV, LP in the principal amount of \$37,368.95.
- (h) Promissory Note, dated December 31, 2020, made by Mastermind LP by its general partner Mastermind GP Inc. in favour of Birch Hill Equity Partners IV, LP in the principal amount of \$27,332.78.
- (i) Promissory Note, dated December 31, 2021, made by Mastermind LP by its general partner Mastermind GP Inc. in favour of Birch Hill Equity Partners IV, LP in the principal amount of \$50,019.00.
- (j) Promissory Note, dated January 3, 2023, made by Mastermind LP by its general partner Mastermind GP Inc. in favour of Birch Hill Equity Partners IV, LP in the principal amount of \$50,019.00.
- (k) Promissory Note, dated December 31, 2021, made by Mastermind LP by its general partner Mastermind GP Inc. in favour of Birch Hill Equity Partners (US) IV, LP in the principal amount of \$68,564.92.
- (l) Promissory Note, dated January 3, 2023, made by Mastermind LP by its general partner Mastermind GP Inc. in favour of Birch Hill Equity Partners (US) IV, LP in the principal amount of \$68,564.94.

SCHEDULE 1.1(B)
PURCHASED LOCATIONS AND NON-PURCHASED LOCATIONS

Non-Purchased Locations

[illegible]

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■	██

Purchased Locations

[REDACTED]		
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

[illegible][illegible]

SCHEDULE 2.1(H)
ASSUMED CONTRACTS

All Contracts entered into by Seller (i) in respect of the Purchased Locations, (ii) information, internet and other technology, including ecommerce providers and related services, and (iii) logistics, warehouse or supply chain providers, such as transportation providers, customs brokers and freight forwarders.

SCHEDULE 2.1(I)
ASSUMED AUTHORIZATIONS

Nil.

SCHEDULE 2.1(J)
INTELLECTUAL PROPERTY

Trademarks – Canada

Application No.	Trademark	Type	CIPO Status
1098236	MASTERMINDTOYS.COM	Word	Registered
1439063	MASTERMINDTOYS Design	Design	Registered
0596468	MASTERMIND	Word	Registered
1986233	WHY KIDS PLAY	Standard Characters	Formalized
0563939	MASTERMIND EDUCATIONAL	Word	Registered
2265042	HOODIE HOUNDZ	Standard Characters	Formalized
2265041	MASTERMIND TOYS	Standard Characters	Formalized
1229852	MASTERMIND EDUCATIONAL TOYS & Design	Design	Registered
1010294	MASTERMIND	Word	Registered
1922280	MASTERMIND TOYS PERKS	Word	Pending
1922281	MASTERMIND TOYS PERKS	Word	Pending
	MASTERMIND TOYS BABY	Word	Submitted

Trademarks – United States

Serial No.	Trademark	Type
88959056	MASTERMINDTOYS	Service Mark
88959073	MASTERMIND TOYS	Service Mark
85876399	MASTERMIND TOYS	Service Mark
76238733	MASTERMINDTOYS.COM	Service Mark

SCHEDULE 2.1(K)
BUSINESS AND DOMAIN NAMES

Domain Names

Domain Name	Account Holder
mastermindtoys.ca	Mastermind LP
mastermind-toy.ca	Mastermind LP
mastermindtoy.info	Mastermind LP
mastermindtoys.co.nz	Mastermind Educational Technologies Inc.*
mastermindtoys.co.uk	Mastermind Educational Technologies Inc.*
mastermindtoy.ca	Mastermind LP
mmtoysandbooks.com	Mastermind LP
mastermind-toys.com	Mastermind LP
mastermindtoysacademy.com	Mastermind LP
mastermind.ca	Mastermind LP
toyshopoflondon.com	Mastermind LP
mastermindeducational.com	Mastermind LP
mastermind-toys.ca	Mastermind LP
mastermindeducational.ca	Mastermind LP
mastermindtoys.us	Mastermind LP
mastertoy.com	Mastermind LP
mastermind-toy.com	Mastermind LP
mastermindstore.ca	Mastermind LP
mmtoys.ca	Mastermind LP
mmtoysandbooks.ca	Mastermind LP
mastermindtoysacademy.ca	Mastermind LP
mastermindperks.ca	Mastermind LP
mastermindperks.com	Mastermind LP
mastermindperksplus.ca	Mastermind LP
mastermindperksplus.com	Mastermind LP
mastermindtoysperks.ca	Mastermind LP
mastermindtoysperks.com	Mastermind LP
mastermindtoysperksplus.ca	Mastermind LP
mastermindtoysperksplus.com	Mastermind LP
mmtperks.ca	Mastermind LP
mmtperks.com	Mastermind LP
mmtperksplus.ca	Mastermind LP
mmtperksplus.com	Mastermind LP
mastermindtoy.com	Mastermind LP

Domain Name	Account Holder
mastermindtoys.com	Mastermind LP
mastermindtoys.net	Mastermind LP
mastermindtoys.org	Mastermind LP
mastermindtoys.biz	Mastermind LP

*Mastermind Educational Technologies Inc. is the corporation from whom Seller acquired the Mastermind business. Seller has been maintaining these domain names notwithstanding that they are still in the name of Mastermind Educational Technologies Inc.

SCHEDULE 2.2(L)
EXCLUDED ASSETS

- Long Term Incentive Plan
- Stock Option Plan

EXHIBIT A
FORM OF APPROVAL AND VESTING ORDER

See attached.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)	WEDNESDAY, THE 13TH
)	
JUSTICE STEELE)	DAY OF DECEMBER, 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 MASTERMIND GP INC.

(the “**Applicant**”)

APPROVAL AND VESTING ORDER

THIS MOTION, made by the Applicant pursuant to the *Companies' Creditors Arrangement Act* (Canada) (“**CCAA**”), for an order approving the sale transactions (the “**Transactions**”) contemplated by an asset purchase agreement dated as of December [●], 2023 (the “**APA**”) between Mastermind LP, by its general partner, Mastermind GP Inc., as seller (the “**Seller**”) and Unity Acquisitions Inc. as buyer (the “**Buyer**”) and attached as Confidential Exhibit “[●]” to the affidavit of Lucio Milanovich sworn December [●], 2023 (the “**Milanovich Affidavit**”) and vesting in the Buyer all of the Seller’s right, title and interest in and to the Purchased Assets described in the APA, was heard this day at 330 University Avenue, Toronto, Ontario by videoconference via Zoom.

ON READING the Notice of Motion and Motion Record of the Applicant and the [Second] Report (the “[**Second**] **Report**”) of Alvarez & Marsal Canada Inc., in its capacity as court-appointed monitor (in such capacity, the “**Monitor**”) of Mastermind GP Inc. and Mastermind LP (collectively, the “**Mastermind Entities**”), and on hearing the submissions of

counsel for the Mastermind Entities, the Monitor, the Buyer, and counsel for the other persons listed on the counsel slip, no one appearing for any other person on the service list, although properly served as appears from the affidavit of service of [REDACTED] sworn December [REDACTED], 2023, filed:

SERVICE AND DEFINITIONS

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

2. **THIS COURT ORDERS** that capitalized terms used herein but not otherwise defined have the definitions given to them in the APA.

APPROVAL OF THE TRANSACTIONS

3. **THIS COURT ORDERS AND DECLARES** that the Transactions are hereby approved, and the execution of the APA by the Seller is hereby authorized and approved, with such minor amendments as the Seller and the Buyer, with the approval of the Monitor, may agree upon. The Seller and the Monitor are hereby authorized and directed to perform their respective obligations under the APA and any ancillary documents and to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transactions and for the conveyance of the Purchased Assets to the Buyer.

4. **THIS COURT ORDERS AND DECLARES** that this Order shall constitute the only authorization required by the Monitor and Seller to proceed with the Transactions and that no shareholder, partner, or other approvals shall be required in connection therewith.

VESTING OF THE PURCHASED ASSETS

5. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Monitor's certificate to the Seller and Buyer or their respective counsel substantially in the form attached as **Schedule "A"** (the "**Monitor's Certificate**"), all of the Seller's right, title and interest in and to the Purchased Assets shall vest absolutely in the Buyer, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, rights of distraint, levies, charges, or other financial or monetary claims, whether or not they have attached or been

perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (a) any encumbrances or charges created by an order of this Court made in the CCAA Proceedings, including, without limitation, the Amended and Restated Initial Order of the Honourable Justice Steele dated November 30, 2023 (collectively, the “**Amended and Restated Initial Order**”), which charges include, without limitation, the DIP Charge, the KERP Charge, the D&O Charge, and the Administration Charge (as those terms are defined in the Amended and Restated Initial Order); (b) all charges, security interests, or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (c) those Claims listed on **Schedule “B”** (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the Permitted Encumbrances, easements and restrictive covenants listed on **Schedule “C”**) and, for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

6. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Monitor’s Certificate, all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

7. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the Monitor’s Certificate and deliver a copy of the Monitor’s Certificate to the service list, in each case forthwith after delivery thereof to the Seller and Buyer or their respective counsel.

8. **THIS COURT ORDERS** that the Monitor may rely on written notice from the Seller and the Buyer or their respective counsel regarding the fulfillment or waiver of conditions to Closing under the APA and shall have no liability with respect to delivery of the Monitor’s Certificate.

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

- (a) the pendency of these proceedings;

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

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

SELLER NAME CHANGE

10. **THIS COURT ORDERS** that, notwithstanding the provisions of subsection 171(3) of the *Business Corporations Act* (Ontario) (the “**OBCA**”) or similar provision of any other applicable federal or provincial legislation, the Mastermind Entities shall be and are hereby authorized and directed, upon filing of the Monitor’s Certificate, to take any appropriate action to change the Seller’s and its Affiliates’ respective names to a name which does not include the words “Mastermind” or “Mastermind Toys” or any part thereof or any similar words, including, but not limited to, filing articles of amendment in accordance with the OBCA and registering an amendment, renewal, or cancellation of a registration in accordance with the *Business Names Act* (Ontario) (“**BNA**”) or any other applicable federal or provincial legislation, for and on behalf of each of the Mastermind Entities and any of their respective Affiliates for the sole purpose of complying with this paragraph 10, and this Court hereby directs the Director (as defined in the OBCA) and Registrar (as defined in the BNA) and any analogous governmental authority to endorse, certify, and/or issue such documents and take such further actions as are necessary to give effect to this paragraph 10.

DISCLOSURE OF PERSONAL INFORMATION

11. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada) (“**PIPEDA**”), each of the Mastermind Entities and the Monitor, as the case may be, is authorized and permitted to disclose and transfer to the Buyer all human resources and payroll information in the Seller’s records pertaining to the Seller’s past and current employees and customers, including, without limitation, the personal information of the Transferred Employees. The Buyer shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Seller.

SEALING ORDER

12. **THIS COURT ORDERS** that Confidential Exhibit [●] to the Milanovich Affidavit, being an unredacted copy of the APA, is hereby sealed and shall not form part of the public record, subject to further order of this Court.

AID & RECOGNITION

13. **THIS COURT ORDERS AND DECLARES** that the Mastermind Entities, the Monitor or the Buyer may apply to the Court as necessary to seek further orders and directions to give effect to this Order.

14. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Mastermind Entities, the Monitor, and the Buyer and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Mastermind Entities, the Monitor, as an officer of this Court, and the Buyer as may be necessary or desirable to give effect to this Order or to assist the Mastermind Entities, the Monitor, and the Buyer and their respective agents in carrying out the terms of this Order.

15. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Toronto time) on the date of this Order without any need for filing or entry.

Schedule “A” – Form of Monitor’s Certificate

Court File No. CV-23-00710259-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MASTERMIND GP INC.

(the “**Applicant**”)

MONITOR’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Steele of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated November 23, 2023 (as amended and restated on November 30, 2023, and as may be further amended and restated from time to time), Alvarez & Marsal Canada Inc. was appointed as the monitor (in such capacity, the “**Monitor**”) of the undertaking, property and assets of Mastermind GP Inc. and Mastermind LP under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.

B. Pursuant to an Order of the Court dated December 13, 2023, (the “**Sale Approval and Vesting Order**”), the Court approved the asset purchase agreement made as of December [●], 2023 (the “**APA**”) between Mastermind LP, by its general partner Mastermind GP Inc., as seller (the “**Seller**”) and Unity Acquisitions Inc. as buyer (the “**Buyer**”) and provided for the vesting in the Buyer all of the Seller’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Seller and the Buyer or their respective counsel of this Monitor’s Certificate.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the APA or the Sale Approval and Vesting Order, as applicable.

THE MONITOR CERTIFIES the following:

1. The Monitor has received written confirmation from the Seller and the Buyer (through their respective counsel), in form and substance satisfactory to the Monitor, that all conditions to Closing as set out in sections 8.4 and 8.5 of the APA have been satisfied or waived by the Seller and the Buyer, respectively; and
3. The Transactions have been completed to the satisfaction of the Monitor.
4. This Monitor's Certificate was delivered by the Monitor at _____ [TIME] on _____ [DATE].

Alvarez & Marsal Canada Inc., solely in its capacity as Monitor of Mastermind GP Inc. and Mastermind LP, and not in its personal or corporate capacity

Per: _____

Name: Josh Nevsky

Title: Senior Vice-President

Schedule “B” – Encumbrances to be Expunged and Discharged from the Purchased Assets



Schedule “C” – Permitted Encumbrances



AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MASTERMIND GP INC.

Applicant

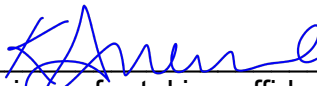
ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST	
Proceeding commenced at Toronto	
SALE APPROVAL AND VESTING ORDER	
DAVIES WARD PHILLIPS & VINEBERG LLP 155 Wellington Street West Toronto ON M5V 3J7	
Natasha MacParland (LSO#42383G) Tel: 416.863.5567 Email: nmacparland@dwpv.com	
Natalie Renner (LSO#55954A) Tel: 416.367.7489 Email: nrenner@dwpv.com	
Kristine Spence (LSO#66099S) Tel: 416.367.7573 Email: kspence@dwpv.com	
Lawyers for Mastermind GP Inc.	

EXHIBIT B
ILLUSTRATIVE NET DEBT STATEMENT

See attached.

TAB H

This is **Exhibit "H"** referred to in the Affidavit of LUCIO MILANOVICH of the City of Toronto, in the Province of Ontario, before me at the City of Toronto in the Province of Ontario, on the 5th day of January, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for taking affidavits
Kristine Spence (LSO #66099S)



Court File No. CV-23-00710259-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	WEDNESDAY, THE 13TH
)	
JUSTICE STEELE)	DAY OF DECEMBER, 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 MASTERMIND GP INC.

(the "**Applicant**")

APPROVAL AND VESTING ORDER

THIS MOTION, made by the Applicant pursuant to the *Companies' Creditors Arrangement Act* (Canada) ("**CCAA**"), for an order approving the sale transactions (the "**Transactions**") contemplated by an asset purchase agreement dated as of December 1, 2023 (the "**APA**") between Mastermind LP, by its general partner, Mastermind GP Inc., as seller (the "**Seller**") and Unity Acquisitions Inc., (or any permitted assignee under the APA), as buyer (the "**Buyer**") and attached as Confidential Exhibit "G" to the affidavit of Lucio Milanovich sworn December 6, 2023 (the "**Milanovich Affidavit**") and vesting in the Buyer all of the Seller's right, title and interest in and to the Purchased Assets described in the APA, was heard this day at 330 University Avenue, Toronto, Ontario by videoconference via Zoom.

ON READING the Notice of Motion and Motion Record of the Applicant and the Second Report (the "**Second Report**") of Alvarez & Marsal Canada Inc., in its capacity as court-appointed monitor (in such capacity, the "**Monitor**") of Mastermind GP Inc. and Mastermind LP (collectively, the "**Mastermind Entities**"), and on hearing the submissions of counsel for the Mastermind Entities, the Monitor, the Buyer, and counsel for the other persons listed on the

counsel slip, no one appearing for any other person on the service list, although properly served as appears from the Lawyer's Certificate of Service of Kristine Spence sworn December 6, 2023, filed:

SERVICE AND DEFINITIONS

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

2. **THIS COURT ORDERS** that capitalized terms used herein but not otherwise defined have the definitions given to them in the APA.

APPROVAL OF THE TRANSACTIONS

3. **THIS COURT ORDERS AND DECLARES** that the Transactions are hereby approved, and the execution of the APA by the Seller is hereby authorized and approved, with such minor amendments as the Seller and the Buyer, with the approval of the Monitor, may agree upon. The Seller and the Monitor are hereby authorized and directed to perform their respective obligations under the APA and any ancillary documents and to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transactions and for the conveyance of the Purchased Assets to the Buyer.

4. **THIS COURT ORDERS AND DECLARES** that this Order shall constitute the only authorization required by the Monitor and Seller to proceed with the Transactions and that no shareholder, partner, or other approvals shall be required in connection therewith.

VESTING OF THE PURCHASED ASSETS

5. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Monitor's certificate to the Seller and Buyer or their respective counsel substantially in the form attached as **Schedule "A"** (the "**Monitor's Certificate**"), all of the Seller's right, title and interest in and to the Purchased Assets (including any real property leases that may be assigned to the Buyer ("**Leases**")) shall vest absolutely in the Buyer, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, rights of distraint, levies,

charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (a) any encumbrances or charges created by an order of this Court made in the CCAA Proceedings, including, without limitation, the Amended and Restated Initial Order of the Honourable Justice Steele dated November 30, 2023 (collectively, the “**Amended and Restated Initial Order**”), which charges include, without limitation, the DIP Charge, the KERP Charge, the D&O Charge, and the Administration Charge (as those terms are defined in the Amended and Restated Initial Order); (b) all charges, security interests, or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; (c) all amounts assessed or otherwise sought by any provincial taxing authority relating to tax liabilities of the Mastermind Entities for tax periods, or parts thereof, ending on or before the Closing Date; and (d) those Claims listed on **Schedule “B”** (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the Permitted Encumbrances, easements and restrictive covenants listed on **Schedule “C”**) and, for greater certainty, this Court orders that all of the Claims and Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets. Notwithstanding the foregoing, but subject to the terms of any agreement between the Buyer and the applicable landlord with respect to any Lease that may in the future be assigned to the Buyer, nothing in this Order shall affect the rights and remedies of a landlord as against the Buyer that may arise or exist under or in respect of any Lease that may be assigned to the Buyer.

6. **THIS COURT ORDERS THAT** (a) nothing in this Order shall amend or vary, or be deemed to amend or vary, the terms of an a Lease that may in the future be assumed by the Buyer and (b) where a Lease is not, in accordance with its terms, transferrable or assignable to the Buyer without first obtaining the consent of the applicable landlord, such Lease shall not be transferred, conveyed, assigned or vested in the Buyer by operation of this Order, but such assignment shall be effected upon obtaining the requisite consent from the applicable landlord (in which case the Buyer shall be entitled to rely upon, and have the benefit of, all of the provisions of this Order which include, for greater certainty, the transfer and vesting of Purchased Assets to the Buyer) or upon further Order of the Court.

7. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead

of the Purchased Assets, and that from and after the delivery of the Monitor's Certificate, all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

8. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the Monitor's Certificate and deliver a copy of the Monitor's Certificate to the service list, in each case forthwith after delivery thereof to the Seller and Buyer or their respective counsel.

9. **THIS COURT ORDERS** that the Monitor may rely on written notice from the Seller and the Buyer or their respective counsel regarding the fulfillment or waiver of conditions to Closing under the APA and shall have no liability with respect to delivery of the Monitor's Certificate.

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

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

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

SELLER NAME CHANGE

11. **THIS COURT ORDERS** that, notwithstanding the provisions of subsection 171(3) of the *Business Corporations Act* (Ontario) (the “**OBCA**”) or similar provision of any other applicable federal or provincial legislation, the Mastermind Entities shall be and are hereby authorized and directed, upon filing of the Monitor’s Certificate, to take any appropriate action to change the Seller’s and its Affiliates’ respective names to a name which does not include the words “Mastermind” or “Mastermind Toys” or any part thereof or any similar words, including, but not limited to, filing articles of amendment in accordance with the OBCA and registering an amendment, renewal, or cancellation of a registration in accordance with the *Business Names Act* (Ontario) (“**BNA**”) or any other applicable federal or provincial legislation, for and on behalf of each of the Mastermind Entities and any of their respective Affiliates for the sole purpose of complying with this paragraph 11, and this Court hereby directs the Director (as defined in the OBCA) and Registrar (as defined in the BNA) and any analogous governmental authority to endorse, certify, and/or issue such documents and take such further actions as are necessary to give effect to this paragraph 11.

DISCLOSURE OF PERSONAL INFORMATION

12. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act* (Canada) (“**PIPEDA**”), each of the Mastermind Entities and the Monitor, as the case may be, is authorized and permitted to disclose and transfer to the Buyer all human resources and payroll information in the Seller’s records pertaining to the Seller’s past and current employees and customers, including, without limitation, the personal information of the Transferred Employees. The Buyer shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Seller.

SEALING ORDER

13. **THIS COURT ORDERS** that Confidential Exhibit “G” to the Milanovich Affidavit, being an unredacted copy of the APA, is hereby sealed and shall not form part of the public record, subject to further order of this Court.

14. **THIS COURT ORDERS** that the Confidential Appendix “B” to the Second Report of the Monitor, being an unredacted copy of an illustrative wind-down and liquidation analysis and comparative analysis is hereby sealed and shall not form part of the public record, subject to further order of this Court.

AID & RECOGNITION

15. **THIS COURT ORDERS AND DECLARES** that the Mastermind Entities, the Monitor or the Buyer may apply to the Court as necessary to seek further orders and directions to give effect to this Order.

16. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Mastermind Entities, the Monitor, and the Buyer and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Mastermind Entities, the Monitor, as an officer of this Court, and the Buyer as may be necessary or desirable to give effect to this Order or to assist the Mastermind Entities, the Monitor, and the Buyer and their respective agents in carrying out the terms of this Order.

17. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Toronto time) on the date of this Order without any need for filing or entry.



Digitally signed
by Jana Steele
Date: 2023.12.13
15:29:54 -05'00'

Schedule “A” – Form of Monitor’s Certificate

Court File No. CV-23-00710259-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MASTERMIND GP INC.

(the “**Applicant**”)

MONITOR’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Steele of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated November 23, 2023 (as amended and restated on November 30, 2023, and as may be further amended and restated from time to time), Alvarez & Marsal Canada Inc. was appointed as the monitor (in such capacity, the “**Monitor**”) of the undertaking, property and assets of Mastermind GP Inc. and Mastermind LP under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.

B. Pursuant to an Order of the Court dated December 13, 2023, (the “**Sale Approval and Vesting Order**”), the Court approved the asset purchase agreement made as of December 1, 2023 (the “**APA**”) between Mastermind LP, by its general partner Mastermind GP Inc., as seller (the “**Seller**”) and Unity Acquisitions Inc. (or any permitted assignee under the APA) as buyer (the “**Buyer**”) and provided for the vesting in the Buyer all of the Seller’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Seller and the Buyer or their respective counsel of this Monitor’s Certificate.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the APA or the Sale Approval and Vesting Order, as applicable.

THE MONITOR CERTIFIES the following:

1. The Monitor has received written confirmation from the Seller and the Buyer (through their respective counsel), in form and substance satisfactory to the Monitor, that all conditions to Closing as set out in sections 8.4 and 8.5 of the APA have been satisfied or waived by the Seller and the Buyer, respectively; and
3. The Transactions have been completed to the satisfaction of the Monitor.
4. This Monitor's Certificate was delivered by the Monitor at _____ [TIME] on _____ [DATE].

Alvarez & Marsal Canada Inc., solely in its capacity as Monitor of Mastermind GP Inc. and Mastermind LP, and not in its personal or corporate capacity

Per: _____

Name: Josh Nevsky

Title: Senior Vice-President

Schedule “B” – Encumbrances to be Expunged and Discharged from the Purchased Assets

(A) Bank Act Security - Section 427

1. Ontario

REGISTRATION NAME(S)	BANK	FILE/ REGISTRATION NO.	DATE OF NOTICE	EXPIRY DATE
MASTERMIND LP	0010 CANADIAN IMPERIAL BANK OF COMMERCE	01314545	OCTOBER 20, 2017	JUNE 2, 2030

(B) Personal Property Security Interests

1. Alberta

(i) Personal Property Security Act (Alberta)

DEBTOR NAME(S)	SECURED PARTY NAME(S)	FILE/ REGISTRATION NO.	COLLATERAL CLASSIFICATION/ DESCRIPTION	EXPIRY DATE
MASTERMIND LP MASTERMIND GP INC.	BIRCH HILL EQUITY PARTNERS (ENTREPRENEURS) IV, LP BIRCH HILL EQUITY PARTNERS IV, LP BIRCH HILL EQUITY PARTNERS (US) IV, LP	20060232794	ALL PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY OF THE DEBTORS.	JUNE 2, 2030
MASTERMIND GP INC.	BIRCH HILL EQUITY PARTNERS (ENTREPRENEURS) IV, LP BIRCH HILL EQUITY PARTNERS IV, LP BIRCH HILL EQUITY PARTNERS (US) IV, LP	20060232816	ALL PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY OF THE DEBTOR.	JUNE 2, 2030
MASTERMIND GP INC.	CANADIAN IMPERIAL BANK OF COMMERCE, AS AGENT	14101608871	ALL PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY OF THE DEBTOR.	OCTOBER 16, 2024
MASTERMIND LP MASTERMIND GP INC.	CANADIAN IMPERIAL BANK OF COMMERCE, AS AGENT	14101608931	ALL PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY OF THE DEBTOR.	OCTOBER 16, 2024

2. British Columbia

(i) *Personal Property Security Act (British Columbia)*

DEBTOR NAME(S)	SECURED PARTY NAME(S)	FILE/ REGISTRATION NO.	COLLATERAL CLASSIFICATION/ DESCRIPTION	EXPIRY DATE
MASTERMIND LP MASTERMIND GP INC.	BIRCH HILL EQUITY PARTNERS (ENTREPRENEURS) IV, LP BIRCH HILL EQUITY PARTNERS IV, LP BIRCH HILL EQUITY PARTNERS (US) IV, LP	253894M	ALL PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY OF THE DEBTORS AND ALL PROCEEDS THEREOF. PROCEEDS: ALL GOODS, INVESTMENT PROPERTY, INSTRUMENTS, DOCUMENTS OF TITLE, CHATTEL PAPER, INTANGIBLES OR MONEY NOW OR HEREAFTER FORMING PROCEEDS OF THE FOREGOING COLLATERAL. TERMS USED IN THIS GENERAL COLLATERAL , DESCRIPTION WHICH ARE DEFINED IN THE PERSONAL PROPERTY SECURITY ACT (BRITISH COLUMBIA) SHALL HAVE THE MEANINGS SPECIFIED IN THE	JUNE 3, 2030

DEBTOR NAME(S)	SECURED PARTY NAME(S)	FILE/ REGISTRATION NO.	COLLATERAL CLASSIFICATION/ DESCRIPTION	EXPIRY DATE
			ACT, UNLESS THE CONTEXT OTHERWISE INDICATES. THE FULL ADDRESS OF THE SECURED PARTIES IS: 100 WELLINGTON STREET, WEST, TD WEST TOWER, SUITE 2300, TORONTO, ON M5K 1A1.	
MASTERMIND GP INC.	BIRCH HILL EQUITY PARTNERS (ENTREPRENEURS) IV, LP BIRCH HILL EQUITY PARTNERS IV, LP BIRCH HILL EQUITY PARTNERS (US) IV, LP	254012M	ALL PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY OF THE DEBTOR AND ALL PROCEEDS THEREOF. PROCEEDS: ALL GOODS, INVESTMENT PROPERTY, INSTRUMENTS, DOCUMENTS OF TITLE, CHATTEL PAPER, INTANGIBLES OR MONEY NOW OR HEREAFTER FORMING PROCEEDS OF THE FOREGOING COLLATERAL. TERMS USED IN THIS GENERAL COLLATERAL, DESCRIPTION WHICH ARE DEFINED IN THE PERSONAL	JUNE 3, 2030

DEBTOR NAME(S)	SECURED PARTY NAME(S)	FILE/ REGISTRATION NO.	COLLATERAL CLASSIFICATION/ DESCRIPTION	EXPIRY DATE
			PROPERTY SECURITY ACT (BRITISH COLUMBIA) SHALL HAVE THE MEANINGS SPECIFIED IN THE ACT, UNLESS THE CONTEXT OTHERWISE INDICATES. THE FULL ADDRESS OF THE SECURED PARTIES IS: 100 WELLINGTON STREET, WEST, TD WEST TOWER, SUITE 2300, TORONTO, ON M5K 1A1.	
MASTERMIND GP INC.	CANADIAN IMPERIAL BANK OF COMMERCE, AS AGENT	236163I	ALL OF THE DEBTOR'S PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY, INCLUDING, WITHOUT LIMITATION, ALL ACCOUNTS, CHATTEL PAPER, CROPS, DOCUMENTS OF TITLE, EQUIPMENT, FIXTURES, GOODS, INSTRUMENTS, INTANGIBLES, INVENTORY, LICENCES, MONEY AND INVESTMENT PROPERTY (EACH	OCTOBER 16, 2024

DEBTOR NAME(S)	SECURED PARTY NAME(S)	FILE/ REGISTRATION NO.	COLLATERAL CLASSIFICATION/ DESCRIPTION	EXPIRY DATE
			AS DEFINED IN THE BRITISH COLUMBIA PERSONAL PROPERTY SECURITY ACT).	
MASTERMIND LP MASTERMIND GP INC.	CANADIAN IMPERIAL BANK OF COMMERCE, AS AGENT	236166I	ALL OF THE DEBTOR'S PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY, INCLUDING, WITHOUT LIMITATION, ALL ACCOUNTS, CHATTEL PAPER, CROPS, DOCUMENTS OF TITLE, EQUIPMENT, FIXTURES, GOODS, INSTRUMENTS, INTANGIBLES, INVENTORY, LICENCES, MONEY AND INVESTMENT PROPERTY (EACH AS DEFINED IN THE BRITISH COLUMBIA PERSONAL PROPERTY SECURITY ACT).	OCTOBER 16, 2024

3. Manitoba

(i) *Personal Property Security Act (Manitoba)*

DEBTOR NAME(S)	SECURED PARTY NAME(S)	FILE/ REGISTRATION NO.	COLLATERAL CLASSIFICATION/ DESCRIPTION	EXPIRY DATE
MASTERMIND LP MASTERMIND GP INC.	BIRCH HILL EQUITY PARTNERS (ENTREPRENEURS) IV, LP BIRCH HILL EQUITY PARTNERS IV, LP BIRCH HILL EQUITY PARTNERS (US) IV, LP	202008332802	THE SECURITY INTEREST IS TAKEN IN ALL OF THE DEBTORS' PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY.	JUNE 2, 2030
MASTERMIND GP INC. MASTERMIND LP	BIRCH HILL EQUITY PARTNERS (ENTREPRENEURS) IV, LP BIRCH HILL EQUITY PARTNERS IV, LP BIRCH HILL EQUITY PARTNERS (US) IV, LP	202008333302	THE SECURITY INTEREST IS TAKEN IN ALL OF THE DEBTOR'S PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY.	JUNE 2, 2030
MASTERMIND GP INC. MASTERMIND LP	CANADIAN IMPERIAL BANK OF COMMERCE, AS AGENT	201513979300	THE SECURITY INTEREST IS TAKEN IN ALL OF THE DEBTOR'S PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY.	JULY 24, 2024
MASTERMIND GP INC.	CANADIAN IMPERIAL BANK OF COMMERCE, AS AGENT	201513978907	THE SECURITY INTEREST IS TAKEN IN ALL OF THE DEBTOR'S PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY.	JULY 24, 2024

4. New Brunswick

(i) *Personal Property Security Act (New Brunswick)*

DEBTOR NAME(S)	SECURED PARTY NAME(S)	FILE/ REGISTRATION NO.	COLLATERAL CLASSIFICATION/ DESCRIPTION	EXPIRY DATE
MASTERMIND LP MASTERMIND GP INC.	BIRCH HILL EQUITY PARTNERS (ENTREPRENEURS) IV, LP BIRCH HILL EQUITY PARTNERS IV, LP BIRCH HILL EQUITY PARTNERS (US) IV, LP	33697095/ SM998999.7493	A SECURITY INTEREST IS TAKEN IN ALL OF THE DEBTORS' PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY.	JUNE 3, 2030
MASTERMIND GP INC.	BIRCH HILL EQUITY PARTNERS (ENTREPRENEURS) IV, LP BIRCH HILL EQUITY PARTNERS IV, LP BIRCH HILL EQUITY PARTNERS (US) IV, LP	33697343/ SM998999.7493	A SECURITY INTEREST IS TAKEN IN ALL OF THE DEBTOR'S PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY.	JUNE 3, 2030
MASTERMIND LP MASTERMIND GP INC.	CANADIAN IMPERIAL BANK OF COMMERCE, AS AGENT	29157021/ SM001505	A SECURITY INTEREST IS TAKEN IN ALL OF THE DEBTORS' PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY.	JUNE 29, 2024

5. Newfoundland and Labrador

(i) Personal Property Security Act (Newfoundland and Labrador)

DEBTOR NAME(S)	SECURED PARTY NAME(S)	FILE/ REGISTRATION NO.	COLLATERAL CLASSIFICATION/ DESCRIPTION	EXPIRY DATE
MASTERMIND LP MASTERMIND GP INC.	BIRCH HILL EQUITY PARTNERS (ENTREPRENEURS) IV, LP BIRCH HILL EQUITY PARTNERS IV, LP BIRCH HILL EQUITY PARTNERS (US) IV, LP	17887613/ SM998999.7493	A SECURITY INTEREST IS TAKEN IN ALL OF THE DEBTORS' PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY.	JUNE 3, 2030
MASTERMIND GP INC.	BIRCH HILL EQUITY PARTNERS (ENTREPRENEURS) IV, LP BIRCH HILL EQUITY PARTNERS IV, LP BIRCH HILL EQUITY PARTNERS (US) IV, LP	17887753/ SM998999.7493	A SECURITY INTEREST IS TAKEN IN ALL OF THE DEBTOR'S PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY.	JUNE 3, 2030
MASTERMIND LP MASTERMIND GP INC.	CANADIAN IMPERIAL BANK OF COMMERCE, AS AGENT	15918444/ 350505171	ALL PRESENT AND AFTER ACQUIRED PERSONAL PROPERTY OF THE DEBTOR.	MAY 10, 2028

6. Nova Scotia

(i) Personal Property Security Act (Nova Scotia)

DEBTOR NAME(S)	SECURED PARTY NAME(S)	FILE/ REGISTRATION NO.	COLLATERAL CLASSIFICATION/ DESCRIPTION	EXPIRY DATE
MASTERMIND LP MASTERMIND GP INC.	BIRCH HILL EQUITY PARTNERS (ENTREPRENEURS) IV, LP BIRCH HILL EQUITY PARTNERS IV, LP BIRCH HILL EQUITY PARTNERS (US) IV, LP	32841454/ SM998999.7493	A SECURITY INTEREST IS TAKEN IN ALL OF THE DEBTORS' PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY.	JUNE 3, 2030
MASTERMIND GP INC.	BIRCH HILL EQUITY PARTNERS (ENTREPRENEURS) IV, LP BIRCH HILL EQUITY PARTNERS IV, LP BIRCH HILL EQUITY PARTNERS (US) IV, LP	32841686/ SM998999.7493	A SECURITY INTEREST IS TAKEN IN ALL OF THE DEBTOR'S PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY.	JUNE 3, 2030
MASTERMIND LP MASTERMIND GP INC.	CANADIAN IMPERIAL BANK OF COMMERCE, AS AGENT	27869742/ SM001505	A SECURITY INTEREST IS TAKEN IN ALL OF THE DEBTORS' PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY.	JUNE 29, 2024

7. Ontario

(i) Personal Property Security Act (Ontario)

DEBTOR NAME(S)	SECURED PARTY NAME(S)	FILE/ REGISTRATION NO.	COLLATERAL CLASSIFICATION/ DESCRIPTION	EXPIRY DATE
MASTERMIND LP MASTERMIND GP INC.	BIRCH HILL EQUITY PARTNERS (ENTREPRENEURS) IV, LP BIRCH HILL EQUITY PARTNERS IV, LP BIRCH HILL EQUITY PARTNERS (US) IV, LP	762333147/ 20200602 1616 9234 2066	INVENTORY, EQUIPMENT, ACCOUNTS, OTHER, MOTOR VEHICLE	JUNE 2, 2030
MASTERMIND GP INC.	BIRCH HILL EQUITY PARTNERS (ENTREPRENEURS) IV, LP BIRCH HILL EQUITY PARTNERS IV, LP BIRCH HILL EQUITY PARTNERS (US) IV, LP	762333129/ 20200602 1616 9234 2065	INVENTORY, EQUIPMENT, ACCOUNTS, OTHER, MOTOR VEHICLE	JUNE 2, 2030
MASTERMIND LP MASTERMIND GP INC.	CANADIAN IMPERIAL BANK OF COMMERCE, AS AGENT	700732503/ 20141016 1108 1862 3009	INVENTORY, EQUIPMENT, ACCOUNTS, OTHER, MOTOR VEHICLE	OCTOBER 16, 2024
MASTERMIND GP INC.	CANADIAN IMPERIAL BANK OF COMMERCE, AS AGENT	700732512/ 20141016 1108 1862 3010	INVENTORY, EQUIPMENT, ACCOUNTS, OTHER, MOTOR VEHICLE	OCTOBER 16, 2024

8. Saskatchewan

(i) Personal Property Security Act (Saskatchewan)

DEBTOR NAME(S)	SECURED PARTY NAME(S)	FILE/ REGISTRATION NO.	COLLATERAL CLASSIFICATION/ DESCRIPTION	EXPIRY DATE
MASTERMIND LP MASTERMIND GP INC.	BIRCH HILL EQUITY PARTNERS (ENTREPRENEURS) IV, LP BIRCH HILL EQUITY PARTNERS IV, LP BIRCH HILL EQUITY PARTNERS (US) IV, LP	302039929	ALL PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY OF THE DEBTORS.	JUNE 2, 2030
MASTERMIND GP INC.	BIRCH HILL EQUITY PARTNERS (ENTREPRENEURS) IV, LP BIRCH HILL EQUITY PARTNERS IV, LP BIRCH HILL EQUITY PARTNERS (US) IV, LP	302039933	ALL PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY OF THE DEBTOR.	JUNE 2, 2030
MASTERMIND GP INC.	CANADIAN IMPERIAL BANK OF COMMERCE, AS AGENT	301453681	ALL OF THE DEBTOR'S PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY.	MARCH 3, 2025
MASTERMIND LP MASTERMIND GP INC.	CANADIAN IMPERIAL BANK OF COMMERCE, AS AGENT	301453686	ALL OF THE DEBTOR'S PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY.	MARCH 3, 2025

(C) Litigation

1. Ontario

PLAINTIFF(S)/ APPELLANT(S)	DEFENDANT(S)/ RESPONDENT(S)	JURISDICTION/ COURT FILE NO.	ADDITIONAL INFORMATION	CASE STATUS
Sarah Jordan	MASTERMIND GP INC. MASTERMIND LP	Toronto/ CV23007021050000	Amount: \$1,300,000 Case Opened: June 30, 2023 Case Type: Employment or Labour	Active
Robert Renaud	MASTERMIND LP 1836636 ONTARIO INC BORGFELDT (CANADA) LIMITED JOHN DOE MANUFACTURER SHANTOU YITONG ELECTRONIC CO., LTD	Toronto/ CV16005632270000	Amount: \$2,500,000 Case Opened: October 31, 2016 Case Type: Tort – Economic Injury	Inactive
Rory Levy	MASTERMIND LP	Toronto/ CV20006413470000	Amount: \$36,000 Case Opened: May 21, 2020 Case Type: Contract Case dismissed on consent September 14, 2020.	Inactive

Schedule “C” – Permitted Encumbrances

Nil

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. Court File No. CV-23-00710259-00CL
1985, C. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MASTERMIND GP INC.

Applicant

ONTARIO SUPERIOR COURT OF JUSTICE COMMERCIAL LIST Proceeding commenced at Toronto	
SALE APPROVAL AND VESTING ORDER	
DAVIES WARD PHILLIPS & VINEBERG LLP 155 Wellington Street West Toronto ON M5V 3J7 Natasha MacParland (LSO#42383G) Tel: 416.863.5567 Email: nmacparland@dwpv.com Natalie Renner (LSO#55954A) Tel: 416.367.7489 Email: nrenner@dwpv.com Kristine Spence (LSO#66099S) Tel: 416.367.7573 Email: kspence@dwpv.com Lawyers for Mastermind GP Inc.	

TAB I

ONTARIO
SUPERIOR COURT OF JUSTICE
Commercial List

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF MASTERMIND GP INC.

Applicants

DISTRIBUTION LIST
(AS AT JANUARY 5, 2024)

Counterparties to assigned contracts:

TO:	ACCEO Solutions Inc. Tender Retail division 5100 - 75 rue Queen Montreal, QC H3C 2N6 Email: tdrbilling@acceo.com Tel: 514.288.7161 Fax: 514.868.5334
AND TO:	ACCEO Solutions Inc. 400 - 2 Lansing Square Toronto, ON M2J 4P8 Email: sales@tenderretail.com Tel: 416.498.1200
AND TO:	Amazon Web Services Canada, Inc. 120 Bremner Blvd, 26th Floor Toronto, ON M5J 0A8
AND TO:	BDO Canada LLP 500-360 Oakville Place Drive Oakville, ON L6H 6K8 Tel: 289.881.1111 Fax: 905.845.8615 Austin D'souza Partner, BDO Consulting Email: adsouza@bdo.ca

AND TO:	Bell Mobility Inc. 1 Carrefour Alexander-Graham-Bell Building A7 Verdun, QC H3E 3B3 David Barselaar Email: david.barselaar@bell.ca Tel: 519.872.2700
AND TO:	Bell Canada Customer Payment Centre P.O. Box 3650 Station Don Mills Toronto, ON M3C 3X9 Tahir Uddin Client Executive Email: tahir.uddin@bell.ca Tel: 416.296.1920
AND TO:	Blackhawk Network (Canada) Ltd. 3280 Bloor Street West Centre Tower, 8th Floor Suite #801 Toronto, ON M8X 2X3 Steve Dekker Managing Director Email: customerservice@bhnetwork.com Fax: 416-679-9245
AND TO:	The Canada Life Assurance Company Group Insurance Payment Administration PO Box 1053 Winnipeg, MB R3C 2X4
AND TO:	Ceridian Canada Ltd. 242 Hargrave St, Suite 300 Winnipeg, MB R3C 0T8 Email: accountsreceivable@ceridian.com
AND TO:	Chubb Edwards (UTC Fire and Security Canada Inc.) 5201 Explorer Drive Mississauga, ON L4W 4H1 Ashir Mehdi National Accounts Manager Email: ashir.mehdi@chubb.ca Tel: 1.866.220.2183 Cell: 416.550.1443
AND TO:	Fast Simon Inc. Sergio Viramontes 212-691 S. Milpitas Blvd Milpitas, CA 95035 Email: support@fastsimon.com

AND TO:	First Data Canada Ltd. Attention: CEO 400-2630 Skymark Ave. Mississauga, ON L4W 5A4 Fax: 905.602.3577
AND TO:	Fiserv, Inc. 255 Fiserv Drive Brookfield, WI 53045 PO Box 979 Brookfield, WI 53008-0979 Brian Green Country Head, Canada Email: sales.apac@fiserv.com
AND TO:	Wells Fargo Bank, National Association Attn: Executive Vice President 1200 Montego Way Walnut Creek, CA 94598
AND TO:	Wells Fargo Financial Corporation Canada Attn: President 40 King St. West Toronto, ON M5H 3Y2
AND TO:	Wells Fargo Bank, National Association Attn: Senior Counsel 800 Walnut Street, MAC: N0001-10A Des Moines, IA 50309 Fax: 515.557.1397
AND TO:	Klaviyo, Inc. 125 Summer St Floor 6 Boston, MA 02111 Email: legal@klaviyo.com
AND TO:	PIM Works 48 Wall Street, 11th floor New York, NY 10005 Matt Werhner Email: matt@piworks.io Tel: 645.664.1983
AND TO:	Publitas.com B.V. J.H. Oortweg 21 2333CH Leiden The Netherlands Email: support@publitas.com

AND TO:	RBC Life Insurance Company 6880 Financial Drive Mississauga, ON L5N 7Y5 Email: groupbenefitssolutions@rbc.com Tel: 1.888.769.2566
AND TO:	Shopify Inc. 150 Elgin St. Ottawa, ON K2P 1 L4 Email: contract_notices@shopify.com Tel: 613.241.2828 Fax: 1.877.350.0829
AND TO:	Softchoice LP 20 Mowat Ave Toronto, ON M6K 3E8 Julaius Mathana Sr. Account Manager Ontario Email: julaius.mathana@softchoice.com Tel: 980.296.2035 Cell: 416.702.6154
AND TO:	Arctic Wolf Networks, Inc. PO Box 46390 Eden Prairie, MN 55344 Email: legal@arcticwolf.com
AND TO:	Barracuda Networks, Inc. 3175 South Winchester Blvd. Campbell, CA 95008 Attn: Legal Department Email: support@barracuda.com
AND TO:	Cisco Systems, Inc. Office of General Counsel 170 West Tasman Drive San Jose, CA 95134 Email: tac@cisco.com
AND TO:	Softchoice LP 173 Dufferin Street Toronto, ON M6K 3H7 Attn: General Counsel Email: legal@softchoice.com Tel: 416.588.9002

AND TO:	TeamViewer Germany GmbH Bahnhofplatz 2, 73033 Göppingen, Germany Email: sales@teamviewer.com
AND TO:	Wasabi Technologies LLC 810-75 Arlington Street Boston, MA 02116 Email: support@wasabi.com
AND TO:	Telus Health (Canada) Ltd. 25 York Street 29th Floor Toronto, ON M5J 2V5 Email: billingsupport@telushealth.com Email: support@lifeworks.com
AND TO:	Viking Cloud 2700-3000 Town Center Southfield, MI 48075 Email: sales@vikingcloud.com

Landlords:

TO:	1133 YONGE STREET PROPERTY INC. c/o Clifton Blake Asset Management Ltd. 370 King Street West Box 35, Suite 805 Toronto, ON M5V 1J9 Nicholas Dobbek Email: ndobbek@cliftonblake.com
AND TO:	1308645 ONTARIO INC. 25 Tremont Drive St. Catharines ON L2T 3A7 Attention: Aziz Sheik Aziz Sheik Email: aziz@pendale.ca
AND TO:	222 & 223 BASELINE ROAD INC. c/o Fiera Real Estate Limited 1 Adelaide Street East Toronto, ON M5C2V9 Attn: Asset Manager Email: info@fierarealestate.com

AND TO:	2241039 ONTARIO INC. c/o Longo Brother's Fruit Markets Inc. 8800 Huntington Road Vaughn, ON L4H 3M6 Anthony Longo Email: anthony.longo@longos.com Joseph Longo Email: joseph.longo@longos.com
AND TO:	ABERDEEN WHITE ROSE HOLDINGS LIMITED 6-2400 Dundas St. W. Mississauga, ON L5K 2R8 Lou Meandro Email: lmeandro@thompsoncentres.com
AND TO:	QRPG LP ITF WESTSHORE TOWN CENTRE QuadReal Property Group Westshore Town Ctr Admin 2945 Jacklin Road Victoria, BC V9B 5E3 Laura Savage Email: laura.savage@quadreal.com
AND TO:	QR BV VILLAGE HOLDINGS LP c/o QuadReal Property Group 199 Bay Street, Suite 4900 Toronto, ON M5L 1G2 Attention: Senior Vice President, Canadian Retail Jennifer Miller Email: jennifer.miller@quadreal.com
AND TO:	QR BV VILLAGE HOLDINGS LP c/o QuadReal Property Group 2901 Bayview Avenue Suite C-100 Toronto, ON M2K 1E6 Attention: General Manager Areti Aloumanis Email: areti.aloumanis@quadreal.com
AND TO:	BK PRIME ALBERTA c/o BentallGreenOak 405-2331 66 Street NW Edmonton, AB T6K 4B5 Danijela Glamoclija Property Manager Email: danijela.glamoclija@bgo.com Tel: 587.489.6641

AND TO:	CANUCK PROPERTIES LTD. AND FINEWAY PROPERTIES LIMITED 95 St. Clair Avenue West Suite 1403 Toronto, ON M4V 1N6 Cynthia Hermoso Email: cynthia.hermoso@canuckproperties.ca
AND TO:	CAPITOL MANAGEMENT CORP. 340 Sheppard Avenue E Suite 300 Toronto, ON M2N 3B4 Lawrence M. Moskovic Email: lmoskovic@rogers.com Robert Kerzner Email: robert@rkerzner.com
AND TO:	Central Walk Tsawwassen Mills Inc. 116-5000 Canoe Pass Way Tsawwassen, BC V4M 0B3 Email: corinne.imrie@centralwalk.com
AND TO:	CHOICE PROPERTIES LIMITED PARTNERSHIP 3225 12th Street, NE Calgary, AB T2E 7S9 Attention: VP Real Estate & operations, Western Canada Jay de Nance Email: jay.denance@choicereit.ca Leanne Laughlin Email: leanne.laughlin@choicereit.ca
AND TO:	CHOICE PROPERTIES LIMITED PARTNERSHIP 22 St. Clair Avenue East Suite 1990 Toronto, ON M4T 2S7 Attention: VP Real Estate & General Counsel Melinda Constant Email: melinda.constant@choicereit.ca
AND TO:	CHOICE REIT 700-22 St Clair Avenue East Toronto, ON M4T 2S5 Attention: 3088409 Nova Scotia Limited Melinda Constant Email: melinda.constant@choicereit.ca

AND TO:	EDCON PROPERTIES LTD. 54-209 Wicksteed Avenue East York, ON M4G 2C1 Brittany Attar Email: brittany@edconproperties.ca Albert Email: albert@edconproperties.ca
AND TO:	HARVARD PROPERTY MANAGEMENT INC. 301, 6103 Current Drive SW Edmonton, AB T6W 2Z4 Attention: Windermere Commercial Lands Ltd. Email: rswitchboard@hillcompanies.com
AND TO:	JELI HOLDINGS INC. 2100 Bloor St. W., #6130 Toronto ON M6S 5A5 Philip Abramson Email: abramson@jeligroup.com
AND TO:	JUDELL LTD. c/o Realspace Management Group Inc. 3790 Victoria Park Ave Suite 100 Toronto, ON M2H 3H7 Steve Balazic Email: balazic@realspace.ca Chris Holder Email: chrisholder@realspace.ca
AND TO:	KANATA ENTERTAINMENT HOLDINGS INC. c/o PenEquity Realty Corporation 901-33 Yonge Street Toronto, ON M5E 1G4 c/o STIKEMAN ELLIOTT LLP 5300 Commerce Court West 199 Bay St. Toronto, ON M5L 1B9 Natasha Rambaran Email: nrambaran@stikeman.com Tel: 416.869.5504

AND TO:	L&G ENTERPRISES (WATERLOO) CORP. 4119 Sherbrooke St W Westmount, QC H3Z 1A7 Parviz Walji Email: pwalji@sheinergroup.com
AND TO:	MAPLETON HOLDINGS INC. P.O. Box 928 Moncton, NB E1C 8N8 Ray Lantz Email: rlantz@theashfordgroup.com
AND TO:	NUMOUNT ANCASTER INC. 40 Pleasant Boulevard Suite 800 Toronto, ON M4T 1J9 c/o Capitol Management Corp. Robert Kerzner Email: robert@rkerzner.com
AND TO:	PLACE D'ORLEANS 110 Place d'Orleans Drive Orleans, ON K1C 2L9 Attention: General Manager Curtis Fortowsky Email: cfortowsky@primarisreit.com
AND TO:	PLACE D'ORLEANS HOLDINGS INC. c/o Primaris Management Inc. 26 Wellington St E Suite 400 Toronto, ON M5E 1S2 Attention: Vice President Legal Samara Sinclair Email: ssinclair@primarisreit.com
AND TO:	PLAZA RETAIL REIT 84 Hogan Court Suite D2B Bedford, NS B4B 2G2 Peter MacKenzie Email: peter.mackenzie@plaza.ca
AND TO:	PRESTON CROSSING PROPERTIES INC. c/o Harvard Property Management Inc. Suite 2000, 1874 Scarth Street Regina, SK S4P 4B3 Email: rswitchboard@hillcompanies.com

AND TO:	REALTRIUM HOLDINGS 2 INC. 8545 McCowan Rd Markham, ON L3P 1W9 Email: sapya@realtrium.com
AND TO:	ROUNDHOUSE CENTRE WINDSOR INC. c/o Terracap Management Inc. 100 Sheppard Avenue East, Suite 502 Toronto, ON M2N 2N5 Email: pgalin@terracap.ca Email: aadms@terracap.ca
AND TO:	SPI QUEEN HOLDINGS INC. c/o Silvercore Properties Inc 5734 Yonge Street 5th Floor Toronto, ON M2M 4E7 Sheldon Silverberg Email: ssilverberg@silvercore.com
AND TO:	STERLING KARAMAR PROPERTY MANAGEMENT 53 The Links Road Toronto, ON M2P 1T7 Sebastian Russo Email: sebastian@sterlingkamar.com Jan Lubell Email: jan.lubell@gmail.com Richard Lubell Email: rslubell@gmail.com
AND TO:	UPPER OAKVILLE SHOPPING CENTRE LIMITED 200-21 Booth Avenue Toronto, ON M4M 2M3 Terrence Tyers tyers@oakvilleshops.com Megan Richardson mrichardson@oakvilleshops.com
AND TO:	WESTHILLS EQUITIES INC. c/o Shape Properties Corp. 707-10th Avenue S.W. Suite 300 Calgary, Alberta T2R 0B3 Attention: Director of Leasing Lauren Elliott Email: lauren.elliott@shape.ca

AND TO:	HARVARD PROPERTY MANAGEMENT INC. 400-10109 106th Street Edmonton, AB T5J 3L7 Attention: Windermere Commercial Lands Ltd. Email: rswitchboard@hillcompanies.com
AND TO:	YONGE & GREEN LANE SOUTH DEVELOPMENTS CORP. c/o Fieldgate Commercial Properties Limited 5400 Yonge St 5th Floor Toronto, ON M2N 5R5 Brian DeWitte briand@fieldgatecommercial.com

EMAIL DISTRIBUTION LIST:

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TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	FRIDAY, THE 12TH
)	
JUSTICE STEELE)	DAY OF JANUARY, 2024

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 MASTERMIND GP INC.

(the "**Applicant**")

ASSIGNMENT ORDER

THIS MOTION, made by the Applicant pursuant to the *Companies' Creditors Arrangement Act* (Canada), as amended (the "**CCAA**"), for, among other things, an order assigning to Mastermind Toys Inc. (the "**Assignee**") all of the rights, title, interest, and obligations of Mastermind GP Inc. and Mastermind LP (collectively, the "**Mastermind Entities**") under the Assigned Contracts (defined below), as contemplated by an asset purchase agreement dated as of December 1, 2023 (as may be amended, restated, or supplemented from time to time, the "**APA**") between Mastermind LP, by its general partner, Mastermind GP Inc., as seller (the "**Seller**"), and Unity Acquisitions Inc. (or any permitted assignee under the APA), as buyer (the "**Buyer**"), and approved by this Court

by an approval and vesting order dated December 13, 2023 (the “**AVO**”), was heard this day at 330 University Avenue, Toronto, Ontario by videoconference via Zoom.

ON READING the Notice of Motion and Motion Record of the Applicant, including Affidavit #4 of Lucio Milanovich sworn January 5, 2024, and the Third Report (the “**Third Report**”) of Alvarez & Marsal Canada Inc., in its capacity as court-appointed monitor (in such capacity, the “**Monitor**”) of the Mastermind Entities, and on hearing the submissions of counsel for the Mastermind Entities, the Monitor, the Buyer and Assignee, and counsel for the other persons listed on the Participant Information Form, no one appearing for any other person on the service list, although properly served as appears from the Lawyer’s Certificate of Service of Kristine Spence dated January 5, 2024, filed:

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used herein but not otherwise defined have the definitions given to them in the APA or AVO, as applicable.

ASSIGNMENT OF ASSIGNED CONTRACTS

3. **THIS COURT ORDERS** that upon delivery of the Monitor’s Certificate:
 - (a) all of the rights, title, interest, and obligations of the Mastermind Entities under the contracts set forth in **Schedule “A”**, including all associated or related agreements, schedules, appendices, addenda, amendments,

supplements, restatements, or other modifications made or entered into from time to time (each an “**Assigned Contract**” and collectively, the “**Assigned Contracts**”) shall be assigned, conveyed, and transferred to and assumed by the Assignee pursuant to section 11.3 of the CCAA;

- (b) with respect to the Assigned Contracts that are real property leases (each a “**Lease**” and, collectively, the “**Leases**”), the Assignee shall be entitled to all of the rights and benefits and subject to all of the obligations and restrictions as tenant pursuant to the terms of each Lease and registrations thereof for the period commencing from and after the delivery of the Monitor’s Certificate to the end of the term of the Lease and may enter into and upon and hold and have quiet enjoyment of such premises contemplated by each Lease (in each case, subject to the Assignee’s right to extend or renew such term) and, if applicable, any renewals thereof, for the Assignee’s own use and benefit, all in accordance with the terms of the applicable Lease, without any interruption from the Mastermind Entities, the landlords under the Leases, or any person whomsoever claiming through or under any of the Mastermind Entities or the landlords under the Leases;
- (c) with respect to the Assigned Contracts that are not Leases, the Assignee shall be entitled to all of the rights and benefits and subject to all of the obligations and restrictions pursuant to the terms of each Assigned Contract;

- (d) the Assigned Contracts shall remain in full force and effect and each counterparty to an Assigned Contract shall be prohibited from exercising any rights or remedies (including, without limitation, any right of set off against Buyer and Assignee in respect of defaults having occurred before the Closing Time) under such Assigned Contract and shall be forever barred, enjoined, and estopped from taking any such action solely by reason of:
- (i) any non-monetary circumstance that existed or event that occurred on or prior to the Closing Date that would have entitled any such counterparty to enforce such rights or remedies or caused an automatic termination to occur;
 - (ii) any defaults arising from the insolvency of the Mastermind Entities;
 - (iii) the commencement of these CCAA Proceedings;
 - (iv) any defaults and/or recapture rights arising from the assignment of the Assigned Contracts to the Assignee;
 - (v) the Mastermind Entities having breached a non-monetary obligation under an Assigned Contract, unless, with respect to any Lease: (A) any such non-monetary default arises or continues after the Lease is assigned to the Assignee; (B) such non-monetary default is capable of being cured by the Assignee; and (C) the Assignee has failed to

remedy the default after having received notice of such default pursuant to the terms of the applicable Lease.

and the counterparties under their respective Assigned Contracts are hereby deemed to waive any and all defaults or events of default relating thereto and any and all notices of default and demands for payment or any step or proceeding taken or commenced in connection therewith under an Assigned Contract shall be deemed to have been rescinded and of no further force or effect. For greater certainty and without limiting the generality of the foregoing, no counterparty to an Assigned Contract shall be permitted to rely on a default, event of default, notice of default, or notice of termination sent to the Mastermind Entities prior to the filing of the Monitor's Certificate as grounds for terminating or seeking relief or damages against the Assignee under any Assigned Contract.

4. **THIS COURT ORDERS** that the assignment of the Assigned Contracts shall be subject to the terms of the AVO and the Mastermind Entities' right, title, and interest in and to the Assigned Contracts shall vest absolutely in the Assignee free and clear of all Claims, including any Encumbrances other than the Permitted Encumbrances in accordance with the terms of the AVO.

5. **THIS COURT ORDERS** that the assignment to the Assignee of the rights and obligations of the Mastermind Entities under the Assigned Contracts pursuant to the CCAA and this Order is valid and binding upon all of the counterparties to the Assigned Contracts notwithstanding any restriction or prohibition contained in any such Assigned

Contracts relating to the assignment thereof, including, without limitation, any provision requiring the consent of, or notice for any period in advance of the assignment to, any party to the assignment subject to the satisfaction of all monetary defaults.

6. **THIS COURT ORDERS** that if an Assigned Contract is removed from the Purchased Assets prior to the Closing Date in accordance with the APA, then such contract shall cease to be an Assigned Contract for the purposes of this Order on notice to the Mastermind Entities and any counterparties to such contract.

7. **THIS COURT ORDERS** that all monetary defaults (the “**Monetary Defaults**”) in relation to the Assigned Contracts listed in **Schedule “A”** to this Order, other than those arising by reason only of the Mastermind Entities’ insolvency, the commencement of these CCAA Proceedings or the Mastermind Entities’ failure to perform a non-monetary obligation, shall be in the amounts set forth therein, and, within seven (7) business days after Closing, the Assignee shall pay such Monetary Defaults as set forth in **Schedule “A”** in full and final satisfaction of any and all Monetary Defaults owing to the counterparties to the Assigned Contracts.

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

- (a) the pendency of these CCAA Proceedings and any declaration of insolvency made herein;
- (b) the pendency of any applications for a bankruptcy or receivership now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada), as amended (the “**BIA**”) in respect of the Mastermind Entities or their

respective property, and any bankruptcy or receivership order issued pursuant to any such applications;

(c) any assignment in bankruptcy made in respect of the Mastermind Entities;
and

(d) the provision of any federal or provincial statute,

the assignment of the Assigned Contracts to the Assignee in accordance with this Order and the APA shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of the Mastermind Entities or their respective property and shall not be void or voidable by the creditors of the Mastermind Entities, nor shall it constitute nor be deemed to be a transfer at undervalue, settlement, fraudulent preference, fraudulent conveyance, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

DIRECTION TO LAND REGISTRY OFFICES

9. **THIS COURT ORDERS** that upon the registration or filing of this Order in the Land Registry Office for the appropriate Land Titles Division under the *Land Titles Act* (Ontario) and/or the *Land Registration Reform Act* (Ontario) (or any equivalent action made pursuant to an analogous provincial registration system or statute concerning land titles and registrations generally), the Land Registrar (or other applicable official) is hereby authorized and directed to make such amendments as are necessary to enter the

Assignee as the lessee in respect of any registration (including, without limitation, any notices of lease) registered or filed in respect of the Leases identified in **Schedule “B”**, which amendment shall be completed by registration of an Application to Register Court Order (or equivalent documentation in another province), appending this Order.

10. **THIS COURT ORDERS**, pursuant to section 109 of the *The Land Titles Act*, 2000, SS 2000, c L-5.1 and section 3-4 of *The King’s Bench Act*, 1998, SS 1998, c Q-1.01, that the Saskatchewan Registrar of Titles shall be and is hereby directed to accept an application (for the purposes of this paragraph, a “**Land Titles Application**”) to effect a change in the interest holder in the Land Registry in respect of the interests registered at the Saskatchewan Land Titles Registry and described by any interest register number on **Schedule “B”** under the heading “Saskatchewan”, with such application to be accompanied by a certified copy of this Order. Any and all registration charges and fees payable in regard to the Land Titles Application shall be to the account of the registrant of the Land Titles Application.

11. **THIS COURT ORDERS** that, pursuant to section 190 of the *Land Titles Act*, RSA 2000, c L-4, the Alberta Registrar of Land Titles shall be and is hereby authorized and directed to transfer those caveats registered or filed in respect of the Leases identified in **Schedule “B”** under the heading “Alberta” to the Assignee having an address of 3400, 350 – 7th Avenue SW, Calgary, Alberta, T2P 3N9.

12. **THIS COURT ORDERS** that the provincial land registry offices and officials are hereby authorized and directed to take such further and other actions as may be reasonably necessary to give effect to this Order and to ensure that all registrations of the

Leases on title to real property are amended in accordance with paragraphs 9, 10 and 11.

AID & RECOGNITION

13. **THIS COURT ORDERS** that the Mastermind Entities, the Monitor, the Buyer, and the Assignee may apply to the Court as necessary to seek further orders and directions to give effect to this Order.

14. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Mastermind Entities and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Mastermind Entities, as may be necessary or desirable to give effect to this Order or to assist the Mastermind Entities and their respective agents in carrying out the terms of this Order.

GENERAL

15. **THIS COURT ORDERS AND DIRECTS** the Mastermind Entities to use best efforts to send a copy of this Order to all of the counterparties to the Assigned Contracts listed in **Schedule "A"** to the last known address or contact.

16. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 am (Toronto time) on the date of this Order without any need for filing or entry.

Schedule “A” – List of Assigned Contracts, Counterparties, and Cure Costs

#	Description of Agreement	Counterparty	Cure Costs (CAD\$)
1.	Master License and Services Agreement dated as of June 18, 2018 between ACCEO Solutions Inc. and Mastermind LP and related agreements with ACCEO Solutions Inc., including but not limited to Schedule A titled License and Services Quotation / Order Form dated as of April 23, 2021 (Quote No. 3164b), as each may have been amended, supplemented or restated from time to time.	ACCEO Solutions Inc.	Nil.
2.	Purchase Order dated as of February 2, 2023 to ACCEO Solutions Inc. for annual support and maintenance services by Mastermind LP (PO No. SO23-00049171) as may have been amended, supplemented or restated from time to time.	ACCEO Solutions Inc.	Nil.
3.	Recurring monthly subscription to Amazon Web Services by Mastermind LP (Account No. 675385119145) as may have been amended, supplemented or restated from time to time.	Amazon Web Services	Nil.
4.	Master Technology Services Agreement dated February 1, 2023 between BDO Canada LLP and Mastermind LP and related agreements with BDO Canada LLP, including but not limited to Exhibit “II” titled Form of Statement of Work for Solution Operations Services dated February 1, 2023 between BDO Canada LLP and Mastermind LP, as each may have been amended, supplemented or restated from time to time.	BDO Canada LLP	\$230,285
5.	Mobility Services Agreement dated February 10, 2023 between Bell Mobility Inc. and Mastermind LP and related agreements with Bell Mobility Inc. as each may have been amended, supplemented or restated from time to time.	Bell Canada	\$31,144

6.	Subscription to Bell Canada for internet/connectivity services by Mastermind GP Inc. (Account No. 523875078) as may have been amended, supplemented or restated from time to time.		
7.	Subscription to Bell Canada for internet/connectivity services by Mastermind GP Inc. (Account No. 523661786) as may have been amended, supplemented or restated from time to time.		
8.	Recurring monthly subscription to Bell Canada for "Network DDOS Security" by Mastermind GP Inc. (Account No. 524853873) as may have been amended, supplemented or restated from time to time.		
9.	Recurring monthly subscription to Bell Canada for "Managed Services Firewall" by Mastermind GP Inc. (Account No. 536667734) as may have been amended, supplemented or restated from time to time.		
10.	Gift Card Agreement dated as of May 18, 2016 between Blackhawk Network (Canada) Ltd. and Mastermind LP and related agreements with Blackhawk Network (Canada) Ltd. as each may have been amended, supplemented or restated from time to time.	Blackhawk Network (Canada) Ltd.	\$970
11.	Canadian Card Participation Agreement dated as of November 30, 2017 between Blackhawk Network (Canada) Ltd. and Mastermind LP and related agreements with Blackhawk Network (Canada) Ltd. as each may have been amended, supplemented or restated from time to time.		
12.	Group Benefit Plan (Class 1 - Employees) Booklet prepared on August 23, 2022 by The Canada Life Assurance Company for Mastermind LP (Policy No. 223824) as may have been amended, supplemented or restated from time to time.	The Canada Life Assurance Company	Nil.
13.	Group Benefit Plan (Class 2 - Senior Management) Booklet prepared on August 23, 2022 by The Canada Life Assurance Company for Mastermind LP (Policy No. 223824) as may have been amended, supplemented or restated from time to time.		

14.	Group Benefit Plan (Class 5 - Contract Executives) Booklet prepared on August 24, 2022 by The Canada Life Assurance Company for Mastermind LP (Policy No. 223824) as may have been amended, supplemented or restated from time to time.		
15.	Group Benefit Plan (Class 6 - Executives) Booklet prepared on August 24, 2022 by The Canada Life Assurance Company for Mastermind LP (Policy No. 223824) as may have been amended, supplemented or restated from time to time.		
16.	Agreement dated as of November 12, 2010 between Ceridian Canada Ltd. and Mastermind LP, and related agreements with Ceridian Canada Ltd., including but not limited to the related Service Exhibits, Statements of Work, Pricing Schedules, Rate Sheets, and Order Forms, and the Amendment dated November 30, 2020 between Ceridian HCM, Inc. and Mastermind LP, as each may have been amended, supplemented or restated from time to time.	Ceridian Canada Ltd. Ceridian HCM, Inc.	Nil.
17.	Agreement dated as of December 31, 2021 between Fast Simon Inc. and Mastermind LP (Invoice No. 20211229MMT) as may have been amended, supplemented or restated from time to time.	Fast Simon Inc.	\$2,644
18.	Proof of Concept Agreement between Fast Simon Inc. and Mastermind LP (Invoice No. FSMMT20231231) as may have been amended, supplemented or restated from time to time.		
19.	Merchant Services Agreement dated as of December 10, 2013 among First Data Canada Ltd., Wells Fargo Financial Corporation Canada, and Mastermind LP and related agreements with First Data Canada Ltd. and Wells Fargo Financial Corporation Canada as each may have been amended, supplemented or restated from time to time.	First Data Canada Ltd. Wells Fargo Financial Corporation Canada Fiserv, Inc.	Nil.

20.	Service Order dated as of September 9, 2020 between Klaviyo, Inc. and Mastermind LP and related agreements with Klaviyo, Inc. as each may have been amended, supplemented or restated from time to time.	Klaviyo, Inc.	Nil.
21.	Statement of Work dated May 31, 2023 between PIMworks, a division of Mobius 365 Knowledge Services, Inc. and Mastermind LP, and related agreements with PIMworks, a division of Mobius 365 Knowledge Services, Inc., as each may have been amended, supplemented or restated from time to time.	PIMworks, a division of Mobius 365 Knowledge Services, Inc.	\$3,525
22.	Purchase Order dated September 25, 2023 between Publitas.com B.V. and Mastermind LP for “Publitas Enterprise – 4 publications per year” by Mastermind LP (Contract No. 101607) as may have been amended, supplemented or restated from time to time.	Publitas.com B.V.	Nil.
23.	Group Benefit Plan (Employee Classes 1, 2, 5, and 6) effective as of August 1, 2022 by RBC Life Insurance Company for Mastermind LP (Policy No. RBC00002884) as may have been amended, supplemented or restated from time to time.	RBC Life Insurance Company	Nil.
24.	Group Benefit Plan (Class 1 - Store Managers hired after June 30, 2012 and all other Employees) effective as of August 1, 2022 by RBC Life Insurance Company for Mastermind LP (Policy No. RBC00002884) as may have been amended, supplemented or restated from time to time.		
25.	Group Benefit Plan (Class 2 - Senior Managers and Store Managers hired prior to July 1, 2012) effective as of August 1, 2022 by RBC Life Insurance Company for Mastermind LP (Policy No. RBC00002884) as may have been amended, supplemented or restated from time to time.		
26.	Group Benefit Plan (Class 5 - Contract Executives) effective as of August 1, 2022 by RBC Life Insurance Company for Mastermind LP (Policy No. RBC00002884) as may have been amended, supplemented or restated from time to time.		

27.	Group Benefit Plan (Class 6 - Executives) effective as of August 1, 2022 by RBC Life Insurance Company for Mastermind LP (Policy No. RBC00002884) as may have been amended, supplemented or restated from time to time.		
28.	Shopify Plus Agreement dated February 4, 2020 between Shopify Inc. and Mastermind LP, and related agreements with Shopify Inc., as each may have been amended, supplemented or restated from time to time.	Shopify Inc.	Nil.
29.	Managed Services Statement of Work dated March 22, 2023 between Softchoice LP and Mastermind LP, and related agreements with Softchoice LP as each may have been amended, supplemented or restated from time to time.	Softchoice LP	\$95,483
30.	Quote dated March 29, 2023 between Softchoice LP and Mastermind LP for "Arctic Wolf MDR + MR" services (Quote No. Q-1453889) as may have been amended, supplemented or restated from time to time.	Softchoice LP Arctic Wolf Networks Inc.	
31.	Subscription to Softchoice LP for Barracuda Networks services by Mastermind LP (Account No. 7006645838) as may have been amended, supplemented or restated from time to time.	Softchoice LP Barracuda Networks, Inc.	
32.	Subscription to Softchoice LP for "Cisco Umbrella DNS Security" by Mastermind LP (Account No. 7006645838) as may have been amended, supplemented or restated from time to time.	Softchoice LP Cisco Systems, Inc.	
33.	Subscription to Softchoice LP for "Managed Cisco Essential" services (Account No. 7006645838) as may have been amended, supplemented or restated from time to time.	Softchoice LP Cisco Systems, Inc.	
34.	Subscription to Softchoice LP for "Windows Server 2022 Standard – 16 Core License Pack" by Mastermind LP (Account No. 7006645838) as may have been amended, supplemented or restated from time to time.	Softchoice LP Microsoft Corporation	
35.	Subscription to Softchoice LP for Office 365 Apps for Business by Mastermind LP (Account No. 7006645838) as may have been amended, supplemented or restated from time to time.	Softchoice LP Microsoft Corporation	

36.	Subscription to Softchoice LP for Office 365 services by Mastermind LP (Account No. 7006645838) as may have been amended, supplemented or restated from time to time.	Softchoice LP Microsoft Corporation	
37.	Subscription to Softchoice LP for TeamViewer by Mastermind LP as may have been amended, supplemented or restated from time to time.	Softchoice LP TeamViewer Germany GmbH	
38.	Subscription to Softchoice LP for Veeam Software services by Mastermind LP (Account No. 7006645838) as may have been amended, supplemented or restated from time to time.	Softchoice LP Veeam Software Group GmbH	
39.	Subscription to Softchoice LP for VMware services by Mastermind LP (Account No. 7006645838) as may have been amended, supplemented or restated from time to time.	Softchoice LP Broadcom Inc.	
40.	Subscription to Softchoice LP for “Wasabi Reserved Capacity Storage” by Mastermind LP (Account No. 7006645838) as may have been amended, supplemented or restated from time to time.	Softchoice LP Wasabi Technologies LLC	
41.	Quote dated June 15, 2021 between Techdynamics Integrations Inc. and Mastermind LP (Quote No. QU-3707) as may have been amended, supplemented or restated from time to time.	Techdynamics Integrations Inc.	Nil.
42.	Employee assistance program with Telus Health (Canada) Ltd. for health and wellness services for Mastermind LP as may have been amended, supplemented or restated from time to time.	Telus Health (Canada) Ltd.	Nil.
43.	Agreement dated August 1, 2016 between UTC Fire & Security Canada Inc. and Mastermind LP and related agreements with UTC Fire & Security Canada Inc., as each may have been amended, supplemented or restated from time to time.	UTC Fire & Security Canada Inc. (<i>operating as</i> Chubb Edwards)	Nil.

44.	Statement of Work dated June 8, 2023 between Viking Cloud Canada, Inc. and Mastermind LP, and related agreements with Viking Cloud Canada, Inc. including but not limited to Exhibit A titled Service Descriptions dated June 8, 2023 between Viking Cloud Canada Inc. and Mastermind LP, as each may have been amended, supplemented or restated from time to time.	Viking Cloud Canada, Inc.	Nil.
45.	Lease agreement dated March 14, 2011 between The Canada Life Assurance Company (successor in interest to The Great-West Life Assurance Company), as landlord, and Mastermind LP, by its general partner Mastermind GP Inc., as tenant, for certain premises located at the property municipally known as 415-419 Milner Avenue, Toronto, ON, as may have been amended, supplemented or restated from time to time (the "Head Office and Distribution Centre").	The Canada Life Assurance Company	Nil.
46.	Lease agreement dated June 10, 2015 between L&G Enterprises (Waterloo) Corp., as landlord, and Mastermind LP, by its general partner Mastermind GP Inc., as tenant, for certain premises located at the property municipally known as Stone Square Centre, 370 Stone Road West, Unit 12, Guelph, ON as may have been amended, supplemented or restated from time to time (the "Guelph Store").	L&G Enterprises (Waterloo) Corp.	Nil.
47.	Lease agreement dated March 7, 2012 between Yonge & Green Lane South Developments Corp., as landlord, and Mastermind LP, by its general partner Mastermind GP Inc., as tenant, for certain premises located at the property municipally known as Yonge Green Lane Common, in the area of Yonge Street and Green Lane East, East Gwillimbury, ON, as may have been amended, supplemented or restated from time to time (the "Newmarket Store").	Yonge & Green Lane South Developments Corp.	Nil.

48.	Lease agreement dated October 1, 2015 between BK Prime Alberta I LP, by its general partner BK Prime Alberta I GP Inc. (successor in interest to Terra Losa Equities Ltd.), as landlord, and Mastermind LP, by its general partner Mastermind GP Inc., as tenant, for certain premises located at the property municipally known as Terra Losa Shopping Centre, 9752 170 Street NW, Edmonton, AB, as may have been amended, supplemented or restated from time to time (the "Terra Losa Store").	BK Prime Alberta I LP, by its general partner BK Prime Alberta I GP Inc.	Nil.
49.	Lease agreement dated June 6, 2017 between Dartmouth Crossing Limited, as landlord, and Mastermind LP, by its general partner Mastermind GP Inc., as tenant, for certain premises located at the property municipally known as Dartmouth Crossing, in the area of Country View Drive and Commodore Drive, as may have been amended, supplemented or restated from time to time (the "Dartmouth Store").	Dartmouth Crossing Limited	Nil.
50.	Lease agreement dated March 8, 2017 between 1133 Yonge Street Property Inc., as landlord, and Mastermind LP, by its general partner Mastermind GP Inc., as tenant, for certain premises located at the property municipally known as 1133 Yonge Street, Toronto, ON, as may have been amended, supplemented or restated from time to time (the "Rosedale Store").	1133 Yonge Street Property Inc.	Nil.
51.	Lease agreement dated April 4, 2003 between Glendale Properties Inc., managing agent for Fiona Strachan (successor in interest to the Estate of Edwin John Strachan), as landlord, and Mastermind LP, by its general partner Mastermind GP Inc. (successor in interest to MET Franchising Inc. and Nancy Green Shops Inc.), as tenant, for certain premises located at the property municipally known as 637-639 Mount Pleasant Road, Toronto, ON, as may have been amended, supplemented or restated from time to time (the "Mount Pleasant Store").	Glendale Properties Inc., managing agent for Fiona Strachan	Nil.

52.	Lease agreement dated April 20, 2017 between bcIMC Realty Corporation, as landlord, and Mastermind LP, by its general partner Mastermind GP Inc., as tenant, for certain premises located at the property municipally known as Westshore Town Centre, 2945 Jacklin Road, Langford, BC, as may have been amended, supplemented or restated from time to time (the "Langford Store").	bcIMC Realty Corporation	Nil.
53.	Lease agreement dated October 1, 1999 between Realtrium Holdings 2 Inc. (successor in interest to McCowan Heritage Holdings Inc., Dixthorpe Developments Limited, Golesco Holdings Limited and Rayla-Jan Holdings Ltd.), as landlord, and Mastermind LP, by its general partner Mastermind GP Inc. (successor in interest to MET Franchising Inc.), as tenant, for certain premises located at the properties municipally known as 8555, 8557, and 8559 McCowan Road, Markham, ON, as may have been amended, supplemented or restated from time to time (the "Markham Store").	Realtrium Holdings 2 Inc.	Nil.
54.	Lease agreement dated July 6, 1999 between OPB Realty Inc. (successor in interest to OPB Realty (Pickering Centre) Ltd.), as landlord, and Mastermind LP, by its general partner Mastermind GP Inc. (successor in interest to MET Franchising Inc. and Mastermind Educational Technologies Inc.), as tenant, for certain premises located at the property municipally known as Pickering Town Centre, in the area of Kingston Road and Liverpool Road, Pickering, ON, as may have been amended, supplemented or restated from time to time (the "Pickering Store").	OPB Realty Inc.	Nil.

55.	Lease agreement dated July 9, 2012 between SmartREIT (Oshawa North) Inc. (successor in interest to Oshawa-Taunton Developments Inc.), as landlord, and Mastermind LP, by its general partner Mastermind GP Inc., as tenant, for certain premises located at the property municipally known as SmartCentres Oshawa North II, in the area of Taunton Road and Harmony Road, Oshawa, ON, as may have been amended, supplemented or restated from time to time (the "Oshawa Store").	SmartREIT (Oshawa North) Inc.	Nil.
56.	Lease agreement dated May 3, 2011 between SAB Realty Limited, as landlord, and Mastermind LP, by its general partner Mastermind GP Inc., as tenant, for certain premises located at the property municipally known as 685 Fanshawe Park Road West, London, ON as may have been amended, supplemented or restated from time to time (the "London North Store").	SAB Realty Limited	Nil.
57.	Lease agreement dated August 21, 2013 between Roundhouse Centre Windsor Inc., as landlord, and Mastermind GP Inc., as tenant, for certain premises located at the property municipally known as Roundhouse Centre, 3155 Howard Avenue, Windsor, ON, as may have been amended, supplemented or restated from time to time (the "Windsor Store").	Roundhouse Centre Windsor Inc.	Nil.
58.	Lease agreement dated July 30, 2009 between 15320 Bayview Avenue Holdings Limited, as landlord, and Mastermind LP, by its general partner Mastermind GP Inc. (successor in interest to MET Franchising Inc.), as tenant, for certain premises located at the property municipally known as Aurora Gateway Centre, in the area of Bayview Avenue and Wellington Street, Aurora, ON as may have been amended, supplemented or restated from time to time (the "Aurora Store").	15320 Bayview Avenue Holdings Limited	Nil.

59.	Lease agreement dated June 1, 2011 between Brant-Plains Holdings Inc., as landlord, and Mastermind LP, by its general partner Mastermind GP Inc., as tenant, for certain premises located at the property municipally known as Brant Plains Village Centre, in the area of 1035 Brant Street and 2021 Plains Road East, Burlington, ON as may have been amended, supplemented or restated from time to time (the "Burlington Store").	Brant-Plains Holdings Inc.	Nil.
60.	Lease agreement dated May 1, 2021 among Canuck Properties Ltd. and Fineway Properties Limited, collectively as landlord, and Mastermind LP, by its general partner Mastermind GP Inc., as tenant, for certain premises located at the property municipally known as 500 Fairway Road South, Kitchener, ON, as may have been amended, supplemented or restated from time to time (the "Kitchener Store").	Canuck Properties Ltd. Fineway Properties Limited	Nil.
61.	Lease agreement dated February 11, 2019 between Aberdeen White Rose Holdings Limited, as landlord, and Mastermind LP, by its general partner Mastermind GP Inc., as tenant, for certain premises located at the property municipally known as Aberdeen White Rose Centre, 50 White Rose Drive, St. John's, NL, as may have been amended, supplemented or restated from time to time (the "St. John's North Store").	Aberdeen White Rose Holdings Limited	Nil.
62.	Lease agreement dated February 20, 2006 between RioKim Holdings (Langley Gate) Inc., as landlord, and Mastermind LP, by its general partner Mastermind GP Inc. (successor in interest to Sony of Canada Ltd.), as tenant, for certain premises located at the property municipally known as Langley Gate, in the area of Langley By-Pass and 200 Street, Langley, BC, as may have been amended, supplemented or restated from time to time (the "Langley Store").	RioKim Holdings (Langley Gate) Inc.	Nil.

63.	Lease agreement dated July 23, 1999 between Upper Oakville Shopping Centre Limited, as landlord, and Mastermind LP, by its general partner Mastermind GP Inc. (successor in interest to MET Franchising Inc.), as tenant, for certain premises located at the property municipally known as Upper Oakville Shopping Centre, in the area of Upper Middle Road and Eighth Line, Oakville, ON as may have been amended, supplemented or restated from time to time (the "Oakville Store").	Upper Oakville Shopping Centre Limited	Nil.
64.	Lease agreement dated June 7, 2017 among Plazacorp Property Holdings Inc. and 3088409 Nova Scotia Limited, by its authorized agent, Creit Management Limited, collectively as landlord, and Mastermind GP Inc., as tenant, for certain premises located at the property municipally known as Chain Lake Drive Plaza, 201 Chain Lake Drive, Halifax, NS, as may have been amended, supplemented or restated from time to time (the "Halifax Store").	Plazacorp Property Holdings Inc. 3088409 Nova Scotia Limited, by its authorized agent, Creit Management Limited	Nil.
65.	Lease agreement dated January 15, 2015 between Numount Ancaster Inc., as landlord, and Mastermind LP, by its general partner Mastermind GP Inc., as tenant, for certain premises located at the property municipally known as 803-839 Golf Links Road, Hamilton, ON, as may have been amended, supplemented or restated from time to time (the "Ancaster Store").	Numount Ancaster Inc.	Nil.
66.	Lease agreement dated December 14, 2017 between Calloway REIT (Saskatoon) Inc., as landlord, and Mastermind LP, by its general partner Mastermind GP Inc., as tenant, for certain premises located at the property municipally known as SmartCentres Saskatoon, in the area of Circle Drive and Clarence Avenue South, as may have been amended, supplemented or restated from time to time (the "Saskatoon South Store").	Calloway REIT (Saskatoon) Inc.	Nil.

67.	Lease agreement dated December 14, 2017 between Mapleton Holdings Inc., as landlord, and Mastermind LP, by its general partner Mastermind GP Inc., as tenant, for certain premises located at the property municipally known as Mapleton Centre, in the area of Mapleton Road and Wheeler Boulevard, Moncton, NB, as may have been amended, supplemented or restated from time to time (the "Moncton Store").	Mapleton Holdings Inc.	Nil.
68.	Lease agreement dated January 18, 2013 between 1308645 Ontario Inc., as landlord, and Mastermind LP, by its general partner Mastermind GP Inc., as tenant, for certain premises located at the property municipally known as Pendale Shopping Plaza, 210 Glendale Avenue, St. Catharines, ON, as may have been amended, supplemented or restated from time to time (the "St. Catharines Store").	1308645 Ontario Inc.	Nil.
69.	Lease agreement dated March 2, 2015 between RioCan Holdings Inc., as landlord, and Mastermind LP, by its general partner Mastermind GP Inc., as tenant, for certain premises located at the property municipally known as South Trail Crossing, 4307 130 Avenue SE, Calgary, AB, as may have been amended, supplemented or restated from time to time (the "Mckenzie Towne Store").	RioCan Holdings Inc.	Nil.
70.	Lease agreement dated August 25, 2014 between Choice Properties Limited Partnership, as landlord, and Mastermind LP, by its general partner Mastermind GP Inc., as tenant, for certain premises located at the property municipally known as Westwood Mall, 3000 Lougheed Highway, Coquitlam, BC, as may have been amended, supplemented or restated from time to time (the "Coquitlam Store").	Choice Properties Limited Partnership	Nil.

71.	Lease agreement dated December 5, 2012 between 2241039 Ontario Inc., as landlord, and Mastermind LP, by its general partner Mastermind GP Inc., as tenant, for certain premises located at the property municipally known as 1079 Maple Avenue, Milton, ON as may have been amended, supplemented or restated from time to time (the "Milton Store").	2241039 Ontario Inc.	Nil.
72.	Lease agreement dated April 29, 1999 between SPI Queen Holdings Inc. (successor in interest to Hammersmith Manor Enterprises Inc.), as landlord, and Mastermind LP, by its general partner Mastermind GP Inc. (successor in interest to MET Franchising Inc.), as tenant, for certain premises located at the property municipally known as 2134 Queen Street East, Toronto, ON, as may have been amended, supplemented or restated from time to time (the "Beaches Store").	SPI Queen Holdings Inc.	Nil.
73.	Lease agreement dated May 23, 2018 between Mission Hill LP, by its general partner Mission Hill GP Inc., as landlord, and Mastermind LP, by its general partner Mastermind GP Inc., as tenant, for certain premises located at the property municipally known as Mission Hill Plaza, 398 Street Alberta Trail, St. Albert, AB, as may have been amended, supplemented or restated from time to time (the "St. Albert Store").	Mission Hill LP, by its general partner Mission Hill GP Inc.	Nil.
74.	Lease agreement dated October 30, 2013 between RioTrin Properties (Barrhaven) Inc., as landlord, and Mastermind LP, by its general partner Mastermind GP Inc., as tenant, for certain premises located at the property municipally known as Chapman Mills Marketplace I, in the area of Strandherd Drive and Greenbank Road, Ottawa, ON, as may have been amended, supplemented or restated from time to time (the "Barrhaven Store").	RioTrin Properties (Barrhaven) Inc.	Nil.

75.	Lease agreement dated November 13, 2015 between Seabrooke Holdings Limited, as landlord, and Mastermind LP, by its general partner Mastermind GP Inc., as tenant, for certain premises located at the property municipally known as 999 Lansdowne Street West, Peterborough, ON, as may have been amended, supplemented or restated from time to time (the "Peterborough Store").	Seabrooke Holdings Limited	Nil.
76.	Lease agreement dated March 8, 2016 between Place d'Orleans Holdings Inc., as landlord, and Mastermind LP, by its general partner Mastermind GP Inc., as tenant, for certain premises located at the property municipally known as Place d'Orleans Shopping Centre, 110 Place d'Orleans Drive, Ottawa, ON, as may have been amended, supplemented or restated from time to time (the "Place d'Orleans Store").	Place d'Orleans Holdings Inc.	Nil.
77.	Lease agreement dated March 24, 2014 among SRF2 Baseline Road South Inc., as landlord, SRF2 Baseline Northwest Inc., as north landlord, and Mastermind LP, by its general partner Mastermind GP Inc., as tenant, for certain premises located at the property municipally known as Baseline Village, 222 Baseline Road, Sherwood Park, AB, as may have been amended, supplemented or restated from time to time (the "Sherwood Park Store").	SRF2 Baseline Road South Inc. SRF2 Baseline Northwest Inc.	Nil.
78.	Lease agreement dated April 17, 2015 between 1651051 Alberta Ltd., as landlord, and Mastermind LP, by its general partner Mastermind GP Inc., as tenant, for certain premises located at the property municipally known as Westgate Centre, 11521 Westgate Drive, Grand Prairie, AB, as may have been amended, supplemented or restated from time to time (the "Grand Prairie Store").	1651051 Alberta Ltd.	Nil.

79.	Lease agreement dated February 14, 2013 between Kanata Entertainment Holdings Inc., as landlord, and Mastermind LP, by its general partner Mastermind GP Inc., as tenant, for certain premises located at the property municipally known as Kanata Entertainment Centrum, in the area of Kanata Avenue and Earl Grey Drive, Ottawa, ON, as may have been amended, supplemented or restated from time to time (the "Kanata Store").	Kanata Entertainment Holdings Inc.	Nil.
80.	Lease agreement dated April 28, 2015 between Calloway REIT (Winnipeg SW) Inc., as landlord, and Mastermind LP, by its general partner Mastermind GP Inc., as tenant, for certain premises located at the property municipally known as SmartCentres Winnipeg Southwest, 1655 Kenaston Boulevard, Winnipeg, MB, as may have been amended, supplemented or restated from time to time (the "Kenaston Store").	Calloway REIT (Winnipeg SW) Inc.	Nil.
81.	Lease agreement dated August 21, 2014 between bclMC Realty Corporation, as landlord, and Mastermind LP, by its general partner Mastermind GP Inc., as tenant, for certain premises located at the property municipally known as Country Hills Town Centre, 500 Country Hills Boulevard NE, Calgary, AB, as may have been amended, supplemented or restated from time to time (the "Country Hills Store").	bclMC Realty Corporation	Nil.
82.	Lease agreement dated June 17, 2016 between Calloway REIT (Regina E2) Inc., as landlord, and Mastermind LP, by its general partner Mastermind GP Inc., as tenant, for certain premises located at the property municipally known as SmartCentres Regina, 2830 Quance Street East, Regina, Regina, SK, as may have been amended, supplemented or restated from time to time (the "Regina East Store").	Calloway REIT (Regina E2) Inc.	Nil.

83.	Lease agreement dated January 25, 2017 between Preston Crossing Properties Inc., as landlord, and Mastermind LP, by its general partner Mastermind GP Inc., as tenant, for certain premises located at the property municipally known as Preston Crossing, 1718 Preston Avenue North, Saskatoon, SK, as may have been amended, supplemented or restated from time to time (the "Preston Crossing Store").	Preston Crossing Properties Inc.	Nil.
84.	Lease agreement dated June 9, 2014 between Clearbrook Town Centre Ltd., as landlord, and Mastermind LP, by its general partner Mastermind GP Inc., as tenant, for certain premises located at the property municipally known as Clearbrook Town Square, 32500 South Fraser Way, Abbotsford, BC, as may have been amended, supplemented or restated from time to time (the "Abbotsford Store")	Clearbrook Town Centre Ltd.	Nil.
85.	Lease agreement dated March 11, 2013 between Westhills Equities Inc., by its agent Shape Properties Corp. (successor in interest to Westhills Equities Inc., by its duly authorized agent Triovest Realty Advisors Inc.), as landlord, and Mastermind LP, by its general partner Mastermind GP Inc., as tenant, for certain premises located at the property municipally known as Westhills Towne Centre, 200 Stewart Green SW, Calgary, AB, as may have been amended, supplemented or restated from time to time (the "Westhills Store").	Westhills Equities Inc., by its agent Shape Properties Corp.	Nil.

86.	Lease agreement dated September 1, 1987 between Jeli Holdings Inc. (successor in interest to 1170700 Ontario Inc., 1170702 Ontario Inc. and Sing Tao (Canada) Limited), as landlord, and Mastermind LP, by its general partner Mastermind GP Inc. (successor in interest to MET Franchising Inc. and Green River Clothiers Ltd.), as tenant, for certain premises located at the property municipally known as Kingsway Mills Shopping Centre, 4242 Dundas Street West, Etobicoke, ON, as may have been amended, supplemented or restated from time to time (the "Etobicoke Store").	Jeli Holdings Inc.	Nil.
87.	Lease agreement dated August 5, 2016 between Central Walk Tsawwassen Mills Inc. (successor in interest to Ivanhoe Cambridge II Inc.), as landlord, and Mastermind LP, by its general partner Mastermind GP Inc., as tenant, for certain premises located at the property municipally known as Tsawwassen Mills Shopping Centre, 5000 Canoe Pass Way, Tsawwassen First Nation, BC, as may have been amended, supplemented or restated from time to time (the "Tsawwassen Store").	Central Walk Tsawwassen Mills Inc.	Nil.
88.	Lease agreement dated September 30, 2019 between RioKim Holdings (Ontario) Inc., as landlord, and Mastermind LP, by its general partner Mastermind GP Inc., as tenant, for certain premises located at the property municipally known as Clarkson Crossing Centre, in the area of Royal Windsor Drive and Southdown Road, Mississauga, ON, as may have been amended, supplemented or restated from time to time (the "Clarkson Crossing Store").	RioKim Holdings (Ontario) Inc.	Nil.

89.	Lease agreement dated January 14, 2015 between RioKim Holdings (Alberta) Inc., as landlord, and Mastermind LP, by its general partner Mastermind GP Inc., as tenant, for certain premises located at the property municipally known South Edmonton Common Shopping Centre, in the area of 99 Street NW and 23 Avenue NW, Edmonton, AB, as may have been amended, supplemented or restated from time to time (the "South Edmonton Common Store").	RioKim Holdings (Alberta) Inc.	Nil.
90.	Lease agreement dated September 23, 2013 between Capital City Shopping Centre Limited, as landlord, and Mastermind LP, by its general partner Mastermind GP Inc., as tenant, for certain premises located at the property municipally known the Boulevard Shopping Centre, 16061 MacLeod Trail SE, Calgary, AB, as may have been amended, supplemented or restated from time to time (the "Shawnessy Store").	Capital City Shopping Centre Limited	Nil.
91.	Lease agreement dated August 26, 2002 among Montez Hillcrest Inc. and Hillcrest Holdings Inc. (successors in interest to Ontrea Inc.), collectively as landlord, and Mastermind LP, by its general partner Mastermind GP Inc. (successor in interest to MET Franchising Inc.), as tenant, for certain premises located at the property municipally known as Hillcrest Mall, in the area of Yonge Street and Carrville Road, Richmond Hill, ON, as may have been amended, supplemented or restated from time to time (the "Richmond Hill Store").	Montez Hillcrest Inc. Hillcrest Holdings Inc.	Nil.
92.	Lease agreement dated August 10, 2000 between Judell Ltd. (successor in interest to Samac Investments Limited), as landlord, and Mastermind LP, by its general partner Mastermind GP Inc. (successor in interest to Mastermind Educational Technologies Inc.), as tenant, for certain premises located at the property municipally known as 3350 Yonge Street, Toronto, ON, as may have been amended, supplemented or restated from time to time (the "Yonge Street Store").	Judell Ltd.	Nil.

93.	Lease agreement dated November 3, 2012 between QR BV Village Holdings LP, by its general partner QR BV Village Holdings GP Inc. (successor in interest to bclMC Realty Corporation and Orlando Corporation), as landlord, and Mastermind LP, by its general partner Mastermind GP Inc., as tenant, for certain premises located at the property municipally known as Bayview Village Shopping Centre, 2901 Bayview Avenue, Toronto, ON, as may have been amended, supplemented or restated from time to time (the "Bayview Village Store").	QR BV Village Holdings LP, by its general partner QR BV Village Holdings GP Inc.	Nil.
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Schedule "B" – List of Leases with Notices Registered on Title

Ontario

	Registration No.	Registration Date	Instrument Type	PIN No.	Land Registry Office No.
1.	YR218775	October 17, 2002	Notice of Lease	03146-0084(LT)	York Region No. 65
2.	AT5130162	May 7, 2019	Notice of Lease	21005-0456(LT)	Toronto No. 80
3.	ER765033	May 18, 2011	Notice of Lease	08138-3394(LT) 08138-3393(LT)	Middlesex No. 33
4.	H843233	April 4, 2000	Notice of Lease	24905-0323(LT)	Halton No. 20
5.	DR122566	November 13, 2013	Notice of Lease	16426-1632(LT) 16426-1633(LT)	Durham No. 40
6.	WE1032521	April 27, 2015	Notice of Lease	17079-0076(LT)	Hamilton Wentworth No. 62
7.	CE600426	February 13, 2014	Notice of Lease	01306-1347(LT)	Essex No. 12
8.	LT1464536	March 29, 2000	Notice of Lease	02915-0028(LT)	York Region No. 65
8a.	YR2833857	June 1, 2018	Application General	02915-0028(LT)	York Region No. 65
9.	HR1122434	February 2, 2013	Notice of Lease	24940-5817(LT) 24940-5813(LT) 24940-5815(LT)	Halton No. 20
10.	OC1833881	October 6, 2016	Notice of Lease	04732-1154(LT) 04732-1155(LT) 04732-1156(LT) 04732-1865(LT) 04732-1866(LT)	Ottawa-Carleton No. 4

				04732-1867(LT) 04732-1868(LT)	
11	WC532407	March 5, 2018	Notice of Lease	71224-0226(LT)	Wellington No. 61
12	AT4888341	June 18, 2016	Notice of Lease	21119-0404(LT)	Toronto No. 80
13	OC1538232	November 18, 2013	Notice of Lease	04507-0034(LT) 04507-0495(LT) 04507-0496(LT)	Ottawa-Carleton No. 4
14	OC1908549	July 17, 2017	Notice of Lease	14508-0432(LT) 14508-0201(LT)	Ottawa-Carleton No. 4

Alberta

	Registration No.	Registration Date	Instrument Type	Short Legal Description(s)
1.	141 015 830	16 January 2014	Caveat re: Lease Interest	9212636;4;6 9212636;4;7 9212636;4;8 9212043;4;2 9212043;4;3 9212043;4;5 9212043;4;4
2.	162 058 798	25 February 2016	Caveat re: Lease Interest	0023941;13;1
3.	162 004 263	08 January 2016	Caveat re: Lease Interest	0828284;1;1A
4.	181 106 744	25 May 2018	Caveat re: Lease Interest	9811232;50;1
5.	161 126 316	01 June 2016	Caveat re: Lease Interest	9910196;5;1
6.	192 093 574	26 April 2019	Caveat re: Lease Interest	8722630;29;20 8722630;29;21 8722630;29;22

				8722630;29;23 8722630;29;24 8722630;29;25 8722630;29;26 9923066;29;27 8720355;29;17
7.	151 108 370	29 April 2015	Caveat re: Lease Interest	9711435;1;4 9711435;1;5 0112223;1;11

Saskatchewan

1. 122931086, registered 05 June 2018
2. 123214261 registered 26 November 2018

Manitoba

1. Caveat 4692867/1 2 February 2016

Nova Scotia

114484521, registered 21 May 2019

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 MASTERMIND GP INC.

Applicant

Court File No. CV-23-00710259-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

ASSIGNMENT ORDER

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Lawyers for Mastermind GP Inc.

TAB 4

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE
JUSTICE STEELE

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FRIDAY, THE 12TH
DAY OF JANUARY, 2024

**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 MASTERMIND GP INC.**

(the "**Applicant**")

ANCILLARY ORDER

THIS MOTION made by the Applicant pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order, *inter alia*, (i) expanding the Monitor's Powers, (ii) changing the style of cause in these CCAA proceedings, and (iii) granting certain other ancillary relief, was heard this day at 330 University Avenue, Toronto, Ontario by videoconference via Zoom.

ON READING the Affidavit #4 of Lucio Milanovich sworn January 5, 2024, the Notice of Motion, the Motion Record of the Applicant, and the Third Report (the "**Third Report**") of Alvarez & Marsal Canada Inc. ("**A&M**"), in its capacity as court-appointed monitor (in such capacity, the "**Monitor**") of Mastermind GP Inc. and Mastermind LP (collectively, the "**Mastermind Entities**"), and on hearing the submissions of counsel for the Mastermind Entities, the Monitor, the Buyer, and counsel for the other persons listed on the Participant Information Form, no one appearing for any other person on the service list, although properly served as appears from the Lawyer's Certificate of Service of Kristine Spence sworn January 5, 2024, filed:

SERVICE AND DEFINITIONS

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

2. **THIS COURT ORDERS** that capitalized terms used herein but not otherwise defined have the definitions given to them in the asset purchase agreement dated as of December 1, 2023 (the “**APA**”), between Mastermind LP, by its general partner, Mastermind GP Inc., and Unity Acquisitions Inc. (or any permitted assignee under the APA) or the Approval and Vesting Order in these CCAA proceedings dated December 13, 2023 (the “**AVO**”), as applicable.

MONITOR’S ENHANCED POWERS

3. **THIS COURT ORDERS** that, in addition to the powers and duties of the Monitor set out in the Amended and Restated Initial Order or any other Order of this Court granted in these CCAA proceedings, the CCAA and applicable law, and without in any way altering the obligations of the Mastermind Entities in these CCAA proceedings, including the Mastermind Entities’ obligations under the APA and Transactions, effective upon the delivery of the Monitor’s Certificate to the Mastermind Entities and the Buyer, the Monitor is hereby authorized and empowered, but not required to:

- (a) take any and all actions and steps, and execute all agreements, documents, instruments and writings, on behalf of, and in the name of, the Mastermind Entities in order to facilitate the performance of any of the Mastermind Entities’ powers or obligations, including, without limitation, under the APA and the Transactions (including any post-closing matters) or any Order of this Court, and to carry out the

Monitor's duties under this Order or any other Order of this Court in these CCAA proceedings;

- (b) execute administrative filings as may be required on behalf of the Mastermind Entities;
- (c) exercise any powers which may be properly exercised by a board of directors of the Mastermind Entities;
- (d) conduct, supervise and direct the continuation or commencement of any process or effort to collect or recover any Property (as defined in the Amended and Restated Initial Order) or other assets of the Mastermind Entities (including any accounts receivable or cash) and to sell or dispose of such Property or other assets in accordance with the Orders of this Court in these CCAA proceedings;
- (e) meet and consult with current or former management of (i) the Mastermind Entities and/or their affiliates or (ii) the Buyer and its affiliates, or any of their respective advisors, with respect to the carrying out of its powers and obligations under this Order or any other Order of this Court in these CCAA proceedings;
- (f) engage, retain, or terminate or cause the Mastermind Entities to engage, retain or terminate the services of any officer, employee, consultant, agent, representative, advisor, or other persons or entities, as the Monitor deems necessary or appropriate to assist with the exercise of the Monitor's powers and duties, including such powers and duties as enhanced pursuant to this Order. For greater certainty, any such officer, employee, consultant, agent, representative, advisor, or other persons or entities engaged or retained pursuant to this paragraph 3(f) shall

thereafter be deemed to be Assistants under the Amended and Restated Initial Order;

- (g) perform or cause the Mastermind Entities to perform such other functions or duties, and enter into or cause the Mastermind Entities to enter into any agreements, disclaim or terminate any agreements or incur any obligations, as the Monitor considers necessary or desirable in order to facilitate or assist the winding-down or liquidation of the Mastermind Entities, the realization and/or sale of all of the Property not transferred pursuant to the AVO, the distribution of any net proceeds of such Property and/or the Transactions, or any other related activities, including, without limitation, in connection with (i) developing and conducting a process for the solicitation, determination and resolution of claims against the Mastermind Entities and their present and former directors and officers, and (ii) terminating these CCAA proceedings;
- (h) exercise any shareholder, partnership, joint venture or other rights of the Mastermind Entities;
- (i) initiate, prosecute, and/or continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Mastermind Entities or the Property;
- (j) have access to all books and records that are the Property of the Mastermind Entities or that are in the Mastermind Entities' possession or control and the same access as the Mastermind Entities have to any books and records no longer in the Mastermind Entities' control or possession (collectively, the **"Books and Records"**);

- (k) engage, deal, communicate, negotiate, agree and settle with any creditor or other stakeholder of the Mastermind Entities (including, without limitation, any governmental authority) in the name of or on behalf of the Mastermind Entities;
- (l) claim or cause the Mastermind Entities to claim any and all insurance proceeds or refunds or tax refunds to which either of the Mastermind Entities is entitled that were not transferred pursuant to the AVO;
- (m) act as an authorized representative of the Mastermind Entities in respect of dealings with any taxing or regulatory authority, and the Monitor shall hereby be entitled to execute any appointment or authorization form on behalf of the Mastermind Entities that a taxing or regulatory authority may require in order to confirm the Monitor's appointment as an authorized representative for such purposes;
- (n) consult with any taxing or regulatory authority with respect to any issues arising in respect of these CCAA proceedings;
- (o) file, or take such actions necessary for the preparation and filing of, on behalf of and in the name of the Mastermind Entities, (i) any tax returns, and (ii) the Mastermind Entities' employee-related remittances, T4 statements and records of employments for the Mastermind Entities' former employees, in either case, based solely upon the information in the Books and Records and on the basis that the Monitor shall incur no liability or obligation to any person with respect to such returns, remittances, statements, records or other documents;
- (p) sign documentation or take other steps as necessary to cause or implement the dissolution or winding-up of the Mastermind Entities;

- (q) assign the Mastermind Entities, or cause the Mastermind Entities to be assigned into bankruptcy and to take any steps incidental thereto, and that A&M is authorized and empowered, but not obligated, to act as the licensed insolvency trustee in bankruptcy of each of the Mastermind Entities;
- (r) apply to this Court for advice and directions or any further Orders necessary or advisable to carry out the Monitor's powers and duties under this Order or any other Order of this Court granted in these CCAA proceedings; and
- (s) take any steps reasonably incidental to the exercise by the Monitor of the powers listed above or the performance of any statutory obligations.

4. **THIS COURT ORDERS** that, upon the delivery of the Monitor's Certificate, the banks and/or financial institutions which maintain the Cash Management System are directed to recognize and permit the Monitor and its representatives to complete any and all transactions on behalf of the Mastermind Entities in connection with such Cash Management System and for such purpose, the Monitor and its representatives are empowered and shall be permitted to execute documents for or on behalf of and in the name of the Mastermind Entities and shall be empowered and permitted to add and remove persons having signing authority with respect to the Cash Management System. The financial institutions maintaining such Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken in accordance with the instructions of the Monitor for and on behalf of the Mastermind Entities and/or as to the use or application of funds transferred, paid, collected or otherwise dealt with in accordance with such instructions and such financial institutions shall be authorized to act in accordance with and in reliance upon such instructions without any liability in respect thereof to any person.

5. **THIS COURT ORDERS** that, notwithstanding anything contained in this Order, the Monitor is not and shall not be or be deemed to be a director, officer or employee of the Mastermind Entities.

6. **THIS COURT ORDERS** that, without limiting, and subject to, the provisions of the Amended and Restated Initial Order and the AVO, the Mastermind Entities shall remain in possession and control of the Property and Business.

7. **THIS COURT ORDERS** that the Monitor shall not be liable for any employee-related liabilities of the Mastermind Entities, including, without limitation, any successor employer liabilities as provided for in subsection 11.8(1) of the CCAA. Nothing in this Order shall, in and of itself, cause the Monitor to be liable for any employee related liabilities of the Mastermind Entities, including, without limitation, wages, severance pay, termination pay, vacation pay, and pension or benefit amounts.

8. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the CCAA, as an officer of this Court or otherwise at law, the Monitor and its legal counsel shall continue to have the benefit of all of the indemnities, charges, protections and priorities as set out in the Amended and Restated Initial Order and any other Order of this Court granted in these CCAA proceedings and all such indemnities, charges, protections and priorities shall apply and extend to the Monitor in carrying out the provisions of this Order and exercising any powers granted to it hereunder. Without limiting the generality of the foregoing, in exercising any powers granted to it hereunder: (i) the Monitor shall not be deemed to have taken or maintained possession or control of the Business or Property, or any part of either of the foregoing; (ii) the Monitor shall be entitled to rely on the Books and Records of the Mastermind Entities without independent investigation; and (iii) the Monitor shall incur no liability or obligation

as a result of exercising any powers granted to it hereunder, save and except for any gross negligence or wilful misconduct on its part.

9. **THIS COURT ORDERS** that nothing in this Order shall constitute or be deemed to constitute the Monitor as a receiver, assignee, liquidator, administrator, receiver-manager, agent of the creditors, or legal representative of the Mastermind Entities or the Property within the meaning of any applicable legislation.

10. **THIS COURT ORDERS** that the powers and authority granted to the Monitor by virtue of this Order shall, if exercised in any case, be paramount to the power and authority of the Mastermind Entities with respect to such matters and, in the event of a conflict between the terms of this Order and those of the Amended and Restated Initial Order or any other Order of this Court granted in these CCAA proceedings, the provisions of this Order shall govern.

DISTRIBUTIONS

11. **THIS COURT ORDERS** that the Monitor, following the delivery of the Monitor's Certificate in accordance with the AVO and APA, shall be hereby authorized and directed, without further Order of the Court, to distribute to the Canadian Imperial Bank of Commerce (the "**Agent**") any amounts required to satisfy all obligations owing under the CIBC Credit Agreement and the forbearance agreement dated December 1, 2023 between the Mastermind Entities and the Agent (the "**Forbearance Agreement**"), which amounts shall be evidenced in a written payout letter from the Agent and delivered in accordance with the APA, and such distribution(s) shall be free and clear of all Claims (including Encumbrances other than Permitted Encumbrances and claims that may arise in connection with the APA), and upon such payment, all commitments to make loans or otherwise extend credit to the Mastermind Entities under the CIBC Credit Agreement or the Forbearance Agreement shall terminate.

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

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

the distribution(s) permitted by paragraph 12 above shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of any of the Mastermind Entities and shall not be void or voidable by creditors of any of the Mastermind Entities, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the Bankruptcy and Insolvency Act (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

COOPERATION WITH THE MONITOR

13. **THIS COURT ORDERS** that the Buyer, the Mastermind Entities and each of their respective advisors, current and former officers, directors, employees, agents and representatives shall co-operate with the Monitor in the exercise of its powers pursuant to this Order or any other Order of this Court granted in these CCAA proceedings, and shall provide the Monitor and the Mastermind Entities with such assistance as the Monitor or the Mastermind Entities may request from time to time to enable the Monitor to carry out and discharge its powers and duties set out in this Order or any other Order of this Court granted in these CCAA proceedings; provided, however, that in the case of the Mastermind Entities' former employees that are, at the time of any such requests for assistance or information by the Mastermind Entities or the Monitor, current employees of the Buyer, subject to further order of this Court, such co-

operation and requests will be limited to reasonable requests for information or assistance that will not reasonably be expected to materially interfere with the day-to-day duties or activities of such employee for the Buyer, shall not cause or potentially cause liability to the Buyer (including in respect of any indemnification of or responsibility for the employees in question) and shall be at the Mastermind Entities' sole expense.

EXTENSION OF STAY OF PROCEEDINGS

14. **THIS COURT ORDERS** that the Stay Period (as defined in the Amended and Restated Initial Order) is hereby extended until and including April 30, 2024, or such later date as this Court may order.

WAGE EARNER PROTECTION PROGRAM ACT

15. **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**"), Mastermind LP meets the criteria prescribed by section 3.2 of the *Wage Earner Protection Program Regulations*, SOR/2008-222 and Mastermind LP's former employees are eligible to receive payments under and in accordance with WEPPA following the termination of their employment.

STYLE OF CAUSE

16. **THIS COURT ORDERS** that upon the official change to the legal names of the Mastermind Entities that is to occur in accordance with the AVO, the name of the Applicant in the within title of proceedings shall be deleted and replaced with the new legal name of the Applicant, and any document filed thereafter in these proceedings (other than the Monitor's Certificate) shall be filed using such revised title of proceedings:

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 OLD MM GP INC.

GENERAL

17. **THIS COURT ORDERS** that the Applicant, Buyer or the Monitor may apply to the Court as necessary to seek further orders and directions to give effect to this Order.

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

19. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Mastermind Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Mastermind Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Mastermind Entities and the Monitor and their respective agents in carrying out the terms of this Order.

20. **THIS COURT ORDERS** that, except as may be necessary to give effect to this Order, the Amended and Restated Initial Order and AVO remain in full force and effect and in the event of a conflict between the terms of this Order and those of the Amended and Restated Initial Order and AVO, the provisions of this Order shall govern.

21. **THIS COURT ORDERS** that, unless otherwise set out herein, this Order and all of its provisions are effective as of 12:01 a.m (Toronto time) on the date of this Order.

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 MASTERMIND GP INC.

Applicant

Court File No. CV-23-00710259-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

ANCILLARY ORDER

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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 MASTERMIND GP INC.

Applicant

Court File No. CV-23-00710259-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**MOTION RECORD
(RETURNABLE JANUARY 12, 2024)**

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