

**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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(MOTION RETURNABLE DECEMBER 13, 2023)**

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## PART I – OVERVIEW<sup>1</sup>

1. Mastermind LP is a limited partnership formed under the laws of Ontario and is the operating entity of the “Mastermind Toys” business.
2. On November 23, 2023 (the “**Filing Date**”), Mastermind LP and its general partner, Mastermind GP Inc. (together, the “**Mastermind Entities**”) were granted protection from their creditors under the *Companies’ Creditors Arrangement Act* (“**CCAA**”) pursuant to the Initial Order. On November 30, 2023, this Court extended and granted further protections pursuant to an Amended and Restated Initial Order.
3. 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 their stakeholders.
4. After a robust pre-filing sale process and extensive negotiations, the Mastermind Entities have entered into a Transaction (as defined below) with Unity Acquisitions Inc. (the “**Purchaser**”) for certain assets of Mastermind LP. If approved, the transaction will result in the continuation of at least 43 of Mastermind LP’s retail stores, preserve jobs and relationships with Mastermind LP’s suppliers and landlords and result in the continuation of the “Mastermind Toys” business.
5. This factum is filed in support of the Mastermind Entities’ motion for an order (a) approving the asset purchase agreement dated as of December 1, 2023 between

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<sup>1</sup> Capitalized terms used but not defined in this factum have the meaning given to them in [Affidavit #3 of Lucio Milanovich sworn on December 6, 2023](#) [“**Third Affidavit**”], Motion Record of the Applicant (“**MR**”), Tab 2.

Mastermind LP and the Purchaser (the “**APA**”), (b) vesting all of Mastermind LP’s rights, title and interest in and to the Purchased Assets (as defined below) in the Purchaser, and (b) granting a sealing order in relation to certain sections in the APA relating to the calculation of the Purchase Price (as defined below).

6. The APA and the Transaction represent the best possible outcome in the circumstances for the Mastermind Entities and their stakeholders. The Mastermind Entities are insolvent and have been experiencing a severe liquidity crisis due to a confluence of factors, including declining sales revenues, the effects of the COVID-19 pandemic, and increased competition in the toy industry.<sup>2</sup> The Transaction ensures the continuation of the “Mastermind Toys” business, which would otherwise be liquidated by the Mastermind Entities.

## **PART II – THE FACTS**

7. The facts underling this motion are more fully set out in Affidavit #3 of Lucio Milanovich, sworn on December 6, 2023 in support of this motion (the “**Third Affidavit**”).<sup>3</sup>

### **A. The Sale Process Leading to the Transaction was Reasonable in the Circumstances**

#### **(i) Initial Efforts to Find a Purchaser**

8. The Mastermind Entities’ efforts to find a going concern purchaser long pre-dated the commencement of these CCAA proceedings.<sup>4</sup>

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<sup>2</sup> Third Affidavit at [para. 7](#), MR, Tab 2, p. 23.

<sup>3</sup> [Third Affidavit](#), MR, Tab 2.

<sup>4</sup> Third Affidavit at [paras. 15, 18](#), MR, Tab 2, pp. 25-26.

9. In response to Mastermind LP's ongoing liquidity issues, in March 2023, the Mastermind Entities engaged Alvarez & Marsal Canada Securities Inc. ("**A&M Corporate Finance**") to review and advise on various strategic alternatives.<sup>5</sup> After exploring various options, A&M Corporate Finance determined that a sale would be the best option, with the goal of engaging a going concern purchaser.<sup>6</sup> As a result, A&M Corporate Finance assisted the Mastermind Entities in structuring and conducting an out-of-Court sale process (the "**Sale Process**").<sup>7</sup>

10. Despite being an out-of-Court process, the Sale Process was similar to sale processes typically undertaken within a CCAA proceeding.<sup>8</sup> The goals of the Sale Process were to: (a) solicit a widespread group of potential bidders to try to maximize returns for the Mastermind Entities' stakeholders; (b) identify the best transaction for the business with regard to the capital investment that a potential purchaser could provide and the total purchase price consideration; and (c) find a going concern purchaser who could complete a transaction within the timelines required by the Mastermind Entities and their lenders.<sup>9</sup>

11. Conducted in two phases, the Sale Process ran for nearly 120 days beginning in April 2023.<sup>10</sup> The Sale Process resulted in the identification and solicitation of 95 potential

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<sup>5</sup> Third Affidavit at [para. 15](#), MR, Tab 2, p. 25.

<sup>6</sup> Third Affidavit at [paras. 16-17](#), MR, Tab 2, p. 26.

<sup>7</sup> Third Affidavit at [para. 15](#), MR, Tab 2, p. 25.

<sup>8</sup> Third Affidavit at [para. 16](#), MR, Tab 2, p. 26.

<sup>9</sup> Third Affidavit at [para. 19](#), MR, Tab 2, p. 27.

<sup>10</sup> Third Affidavit at [paras. 18, 21](#), MR, Tab 2, pp. 26-27.

bidders from Canada, the United States and Europe.<sup>11</sup> Four parties submitted non-binding LOIs, and the Mastermind Entities entered into advanced discussions with two of those parties.<sup>12</sup> Ultimately, however, both parties withdrew from the Sale Process, citing concerns over Mastermind LP's negative sales trends and worsening liquidity.<sup>13</sup>

12. Thereafter, A&M Corporate Finance recanvassed the market for a going concern purchaser.<sup>14</sup> One party expressed an interest and ultimately signed an equity purchase agreement to acquire all equity interests in the Mastermind Entities.<sup>15</sup> However, that transaction subsequently fell through due to difficulties satisfying the notification requirements under the *Competition Act*.<sup>16</sup>

## **(ii) Continuing Efforts to Find a Going Concern Purchaser**

13. While preparing to commence proceedings under the CCAA, the Mastermind Entities, with A&M Corporate Finance, continued their efforts to secure a going concern purchaser.<sup>17</sup> In an attempt to secure a buyer, the Mastermind Entities reached out to approximately 15 parties who had expressed an interest in Mastermind LP's business during the Sale Process.<sup>18</sup> The Purchaser was one of those parties.<sup>19</sup>

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<sup>11</sup> Third Affidavit at [para. 22](#), MR, Tab 2, p. 28.

<sup>12</sup> Third Affidavit at [paras. 25-26](#), MR, Tab 2, pp. 28-29.

<sup>13</sup> Third Affidavit at [paras. 30-31](#), MR, Tab 2, pp. 29-30.

<sup>14</sup> Third Affidavit at [para. 32](#), MR, Tab 2, p. 30.

<sup>15</sup> Third Affidavit at [para. 32](#), MR, Tab 2, p. 30.

<sup>16</sup> Third Affidavit at [para. 33](#), MR, Tab 2, p. 30.

<sup>17</sup> Third Affidavit at [para. 34](#), MR, Tab 2, pp. 30-31.

<sup>18</sup> Third Affidavit at [para. 35](#), MR, Tab 2, p. 31.

<sup>19</sup> Third Affidavit at [para. 35](#), MR, Tab 2, p. 31.

14. The Mastermind Entities commenced these CCAA proceedings while advancing discussions with the Purchaser and other remaining interested parties. After weeks of negotiations and the exchange of due diligence, the Mastermind Entities, in conjunction with the Monitor, executed the APA as further detailed below.<sup>20</sup>

## **B. The APA and Related Transaction**

15. On December 1, 2023, the Mastermind Entities entered into the APA with the Purchaser.<sup>21</sup>

16. The APA contemplates that the Purchaser will acquire a substantial portion of the business, assets and operations of Mastermind LP on an “as is, where is” basis, free and clear of all encumbrances (the “**Transaction**”).<sup>22</sup> The Transaction is scheduled to close on January 15, 2024 (the “**Closing Date**”), with an outside date of January 31, 2024.<sup>23</sup>

17. The “Purchased Assets” under the APA include, among other things, the rights of Mastermind LP under the leases for at least 43 of its retail stores (the “**Purchased Stores**”), inventory, fixtures, furniture and equipment located at the Purchased Stores, deposits and prepaid expenses, tax refunds, certain contracts, goodwill, intellectual

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<sup>20</sup> Third Affidavit at [paras. 36-37](#), 40, MR, Tab 2, pp. 31-32; [APA \(redacted in part\)](#), Exhibit G to the Third Affidavit, MR, Tab 2G, p 225.

<sup>21</sup> Third Affidavit at [para. 40](#), MR, Tab 2, p. 32, [APA \(redacted in part\)](#), Exhibit G to the Third Affidavit, MR, Tab 2G, p 225.

<sup>22</sup> Third Affidavit at [paras. 45, 57](#), MR, Tab 2, pp. 33, 39. Such encumbrances are as set out in [Schedule B to the Draft Approval and Vesting Order](#), MR, Tab 5, pp. 349-361. There are no permitted encumbrances (see [Schedule C to the Draft Approval and Vesting Order](#), MR, Tab 5, p. 362). See also: APA (redacted in part), ss. 1.1 (“[Encumbrance](#)” and “[Permitted Encumbrance](#)”), [10.1](#), Exhibit G to the Third Affidavit, MR, Tab 2G, pp. 232, 235-236, 260-261.

<sup>23</sup> Third Affidavit at [para. 43](#), MR, Tab 2, p. 33; APA (redacted in part), ss 1.1 (“[Closing Date](#)”), [9.1](#), Exhibit G to the Third Affidavit, MR, Tab 2G, pp. 231, 259.

property and business names and domain names.<sup>24</sup>

18. The purchase price payable (the “**Purchase Price**”) under the APA is highly confidential and will provide reasonable and fair cash consideration that is sufficient to ensure full repayment to the Mastermind Entities’ senior secured creditor, Canadian Imperial Bank of Commerce (“**CIBC**”),<sup>25</sup> and payment of certain “Priority Payables” as defined in the APA.<sup>26</sup>

19. 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.<sup>27</sup> The Purchaser will offer employment to such employees at least five days prior to the Closing Date on terms and conditions of employment substantially similar to those in effect immediately prior to the Closing Date.<sup>28</sup>

20. The APA also sets out customary closing conditions, including the issuance of an

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<sup>24</sup> Third Affidavit at [para. 46](#), MR, Tab 2, pp. 34-35; The Second Report of The Monitor Alvarez & Marsal Canada Inc. dated December 10, 2023 (the “**Second Report**”) at [ss. 4.2, 4.3\(ii\), 4.10, 8.1\(i\)](#).

<sup>25</sup> As described in the Third Affidavit at [paras. 20](#) and [53](#), on December 1, 2023, the Birch Hill Lenders assigned their interests in the Birch Hill Notes to the Purchaser with the result that they are not secured lenders of the Mastermind Entities from and after that date (see MR, Tab 2, pp. 27, 38).

<sup>26</sup> “**Priority Payables**” is defined in s. 1.1 of the APA as: “(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” (Exhibit G to the Third Affidavit, MR, Tab 2G, p. 235). See also Third Affidavit at [para. 51](#), MR, Tab 2, p. 37.

<sup>27</sup> Third Affidavit at [para. 54](#), MR, Tab 2, p. 38; APA (redacted in part), [s. 4.1\(a\)](#), Exhibit G to the Third Affidavit, MR, Tab 2G, pp. 249-250.

<sup>28</sup> Third Affidavit at [para. 55](#), MR, Tab 2, pp. 38-39; APA (redacted in part), [s. 4.1\(b\)](#), Exhibit G to the Third Affidavit, MR, Tab 2G, p. 250.

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.<sup>29</sup> The APA also requires that Mastermind LP obtains consents to the assignment of, or an order under section 11.3 of the CCAA assigning, a certain number of leases in respect of the Purchased Stores to the Purchaser.<sup>30</sup>

21. Finally, Mastermind LP has agreed that the Mastermind Entities will change their legal names to avoid confusion with the Mastermind entities that will continue to operate the business following closing.<sup>31</sup> Accordingly, the Mastermind Entities are also seeking to amend the style of cause for the CCAA proceedings to reflect the name change.

### **PART III – ISSUES & THE LAW**

22. The issues to be determined on this motion are whether this Court should: (a) approve the APA and the Transaction contemplated therein and vest all of the Purchased Assets in the Purchaser; and (b) grant an order sealing the Purchase Price and related terms, as contemplated in the APA.

#### **A. This Court Should Approve the APA and the Transaction Contemplated Therein and Vest all of the Purchased Assets in the Purchaser**

##### **(i) This Court has Jurisdiction to Approve the Sale and Vest the Purchased Assets in the Purchaser**

23. This Court's jurisdiction to approve a sale of all or substantially all of the assets of

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<sup>29</sup> Third Affidavit at [para. 57](#), MR, Tab 2, p. 39; APA (redacted in part), [s. 8.4](#), Exhibit G to the Third Affidavit, MR, Tab 2G, pp. 257-258.

<sup>30</sup> Third Affidavit at [para. 58](#), MR, Tab 2, pp. 39-40; APA (redacted in part), [ss. 2.4, 8.4, 8.5](#), Exhibit G to the Third Affidavit, MR, Tab 2G, pp. 243-244, 257-259.

<sup>31</sup> Third Affidavit at [para. 62](#), MR, Tab 2, p. 41; APA (redacted in part), [s. 7.1\(a\)](#), Exhibit G to the Third Affidavit, MR, Tab 2G, p. 253.



a debtor company is well established.<sup>32</sup> Section 36(1) of the CCAA gives this Court the express power to authorize such a sale outside the ordinary course of business, without the need for a plan of arrangement or other corporate authorization documents.<sup>33</sup> The sale and subsequent preservation of a business as a going concern is consistent with the overarching purpose of the CCAA<sup>34</sup> – *i.e.*, to permit debtors to carry on business and, where possible, avoid the social and economic costs of bankruptcy and liquidation.<sup>35</sup>

24. In considering whether to exercise its powers, the Court must first be satisfied that the debtor company has complied with section 36(2) of the CCAA, which requires notice to the secured creditors who are likely to be affected by the Transaction. The Mastermind Entities' only secured creditor, CIBC, and Mastermind LP's former secured creditors, the Birch Hill Lenders, were consulted throughout the Sale Process and are in support of the Transaction and have received notice of this hearing.<sup>36</sup>

25. The Court must then consider the following factors as set out in section 36(3) of the CCAA in deciding whether to approve the APA and authorize the Transaction:

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

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<sup>32</sup> *Nortel Networks Corp. et al. (Re)*, 2009 CarswellOnt 4467 (Ont. S.C.J. [Commercial List]) at paras. 35-40, 48, BOA, Tab 17; *Brainhunter Inc.*, 2009 CarswellOnt 7627 (Ont. S.C.J.) at para. 12, BOA, Tab 2; *Target Canada Co. (Re)*, 2015 ONSC 846 [Commercial List] at para. 3, BOA, Tab 28.

<sup>33</sup> *Ibid.*

<sup>34</sup> *Nortel Networks Corp. et al. (Re)*, 2009 CarswellOnt 4467 (Ont. S.C.J. [Commercial List]) at para. 32, BOA, Tab 17; *Residential Warranty Co. of Canada Inc. (Re)*, 2006 ABQB 236 (Alta. Q.B.) at para. 78, BOA, Tab 20; *Clothing for Modern Times Ltd. (Re)*, 2011 ONSC 7522 [Commercial List] at para. 12, BOA, Tab 6.

<sup>35</sup> *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60 at para. 15, BOA, Tab 5.

<sup>36</sup> Third Affidavit at [paras. 20, 41](#), MR, Tab 2, pp. 27, 32.

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

26. As this Court has made clear, the foregoing factors—many of which are overlapping—are neither exhaustive nor a “formulaic check-list that must be followed in every sale transaction under the CCAA.”<sup>37</sup> Instead, this Court need only be satisfied that “sufficient safeguards were adopted to ensure that the related party transaction is in the best interests of the stakeholders of the applicants.”<sup>38</sup> Accordingly, the proposed transaction, as a whole, must be appropriate, fair and reasonable.<sup>39</sup>

27. In *Canwest*, the Court noted that the section 36(3) factors overlap with the common law factors developed in *Royal Bank v. Soundair Corp.* prior to the codification of section 36, which remain relevant guidance for this Court in deciding whether to approve the APA and the Transaction.<sup>40</sup> The *Soundair* factors include: (a) whether the debtor company has made sufficient effort to obtain the best price and has not acted improvidently; (b) whether the debtor company has considered the interests of all parties; (c) the efficacy and integrity of the process for obtaining offers; and (d) whether there has been unfairness in

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<sup>37</sup> *Target Canada Co. (Re)*, 2015 ONSC 2066 [Commercial List] at para. 15, BOA, Tab 27.

<sup>38</sup> *Target Canada Co. (Re)*, 2015 ONSC 2066 [Commercial List] at para. 15, BOA, Tab 27.

<sup>39</sup> *Bloom Lake, g.p.l., (Re)*, 2015 QCCS 1920 at para. 60, BOA, Tab 1.

<sup>40</sup> *Canwest Global Communications Corp. (Re)*, 2010 ONSC 2870 (Ont. S.C.J. [Commercial List]) at para. 13, BOA, Tab 3.

the process.<sup>41</sup>

28. Finally, where a sale process undertaken by the debtor company was fair, reasonable, transparent and efficient, the business judgment rule—which gives deference to the exercise of a debtor company’s commercial and business judgment—must guide this Court’s decision.<sup>42</sup>

**(ii) The APA and the Transaction Satisfy the Requirements in Section 36(3) of the CCAA and the Common Law Principles**

29. The APA and the Transaction, and the pre-filing Sale Process that led to them, satisfy the requirements of the foregoing principles and represent the best available outcome for the Mastermind Entities’ business and its stakeholders.

**(a) *The process leading to the proposed Transaction was reasonable in the circumstances and there is no concern as to its efficacy and integrity***

30. A key consideration in granting a Sale Approval and Vesting Order is the debtor process leading to the sale. Here, the Mastermind Entities commenced the Sale Process *before* the Filing Date. Such a practice is not controversial. Where a debtor company has conducted a pre-filing sale process, courts will apply the same principles as applied to sale processes conducted within a CCAA proceeding.<sup>43</sup> This is because it is the “specific details of the [sale process] as conducted that will be scrutinized” to ensure compliance with the CCAA,<sup>44</sup> not its timing. Consequently, this Court must simply discern whether the

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<sup>41</sup> *Royal Bank of Canada v. Soundair Corp.*, 1991 CarswellOnt 205 (Ont. C.A.) at para. 16, BOA, Tab 22.

<sup>42</sup> *Stelco Inc. (Re)*, [2005] O.J. No. 729 (Ont. C.A.) at paras. 65-68, BOA, Tab 26, *Bloom Lake, g.p.l.*, 2015 QCCS 1920 at para. 28, BOA, Tab 1.

<sup>43</sup> *Nelson Education Ltd. (Re)*, 2015 ONSC 5557 [Commercial List] at paras. 31-33, BOA, Tab 15.

<sup>44</sup> *Sanjel Corp. (Re)*, 2016 ABQB 257 at para. 71, BOA, Tab 23.

pre-filing Sale Process conducted by the Mastermind Entities is one that it would have approved if the process had been conducted post-filing.

31. When reviewing a sale process, the Court will consider: (a) the fairness, transparency and integrity of the proposed process; (b) the commercial efficacy of the proposed process in light of the circumstances; and (c) whether the sale process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.<sup>45</sup>

32. Fairness and Transparency: By design, the Sale Process was fair and transparent. Both of the Mastermind Entities' secured creditors—CIBC and the Birch Hill Lenders—were kept fully apprised and were supportive of the initiative throughout.<sup>46</sup> The timeline of the Sale Process aligns with those of sale processes typically conducted for distressed entities under CCAA proceedings.<sup>47</sup> Moreover, the Sale Process employed clear, predetermined and objective criteria to select a transaction that maximized recovery.<sup>48</sup>

33. Commercial Efficacy: The Mastermind Entities leveraged the extensive professional experience of A&M Corporate Finance to design a sale process that maximized commercial efficacy. For instance, the duration and two-phase structure of the

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<sup>45</sup> *CCM Master Qualified Fund Ltd. v. blutip Power Technologies Ltd.*, 2012 ONSC 1750 [Commercial List] at para. 6, BOA, Tab 4; *Fire & Flower Holdings Corp., et al.*, 2023 ONSC 4048 [Commercial List] at para. 26, BOA, Tab 10; *Validus Power Corp. et al. and Macquarie Equipment Finance Limited*, 2023 ONSC 6367 [Commercial List] at para. 33, BOA, Tab 31; *PCAS Patient Care Automation Services Inc. (Re)*, 2012 ONSC 2840 [Commercial List] at para. 17, BOA, Tab 18; *DCL Corporation (Re)*, 2023 ONSC 3686 [Commercial List] at para. 18, BOA, Tab 8.

<sup>46</sup> Third Affidavit at [para. 20](#), MR, Tab 2, p. 27.

<sup>47</sup> Third Affidavit at [paras. 16, 18](#), MR, Tab 2, p. 26; Initial Affidavit at [paras. 92-93](#), Exhibit A to the Third Affidavit, MR, Tab 2A, pp. 78-79.

<sup>48</sup> Third Affidavit at [para. 19](#), MR, Tab 2, p. 27.

Sale Process were consistent with post-filing sale processes commonly approved by this Court in insolvency proceedings.<sup>49</sup> A&M Corporate Finance designed the Sale Process to encourage potential transactions that would, *inter alia*: (i) allow Mastermind LP to continue as a going concern; and (ii) preserve as many jobs as possible and limit disruptions to third party suppliers and customers.<sup>50</sup>

34. Best Possible Price: The Sale Process was extremely robust and aimed at securing optimal value for the Mastermind Entities' stakeholders.<sup>51</sup> The Sale Process canvassed nearly 100 potential bidders, and resulted in interest from multiple parties.<sup>52</sup> Due to Mastermind LP's worsening liquidity and factors outside its control, the pre-filing Sale Process did not result in any transactions prior to the Filing Date.<sup>53</sup> The Mastermind Entities then recanvassed the market and continued their efforts to find a going concern purchaser, post-filing, that culminated in the Transaction with the Purchaser.<sup>54</sup> The Transaction represents the sole viable going concern transaction from the Sale Process.<sup>55</sup>

35. Accordingly, the Sale Process was fair, robust and properly designed to maximize value for the Mastermind Entities' stakeholders.

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<sup>49</sup> Third Affidavit at [para. 18](#), MR, Tab 2, p. 26; Initial Affidavit at [paras. 92-93](#), Exhibit A to the Third Affidavit, MR, Tab 2A, pp. 78-79.

<sup>50</sup> Third Affidavit at [para. 17](#), MR, Tab 2, p. 26.

<sup>51</sup> Third Affidavit at [paras. 16-17](#), 19, MR, Tab 2, pp. 26-27.

<sup>52</sup> Third Affidavit at [para. 22](#), MR, Tab 2, p. 28.

<sup>53</sup> Third Affidavit at [paras. 27-31](#), MR, Tab 2, pp. 29-30.

<sup>54</sup> Third Affidavit at [paras. 32-40](#), MR, Tab 2, pp. 30-32.

<sup>55</sup> Third Affidavit at [paras. 41, 63](#), MR, Tab 2, pp. 32, 41; Second Report at [s. 4.3\(iv\)](#).

(b) ***The Monitor supports the Sale Process, the APA and the Transaction***

36. The recommendation of the Monitor, as a court-appointed officer experienced in the insolvency field, “carries great weight with the Court in any approval process.”<sup>56</sup> Here, the Monitor not only supports the Sale Process but the corporate finance arm of the Monitor’s business was actively engaged throughout. In addition, the Monitor was consulted heavily while the Mastermind Entities re-engaged the market and entered into negotiations with the Purchaser.<sup>57</sup> Accordingly, the Monitor has endorsed the Sale Process, believing it to have been comprehensive, fair and transparent.<sup>58</sup>

37. The Monitor also supports the Transaction and the relief sought on this motion for, among others, the following reasons outlined in their Second Report dated December 10, 2023 (the “**Second Report**”): (a) the APA provides for the preservation of Mastermind LP’s business, including continued employment, preservation of supplier relations and continuation of leases; (b) the APA and Transaction are the result of an “extensive, fair and transparent Sale Process”; (c) the APA contains commercially reasonable terms and is the product of substantial negotiations; (d) the Purchase Price is fair and reasonable; and (e) the APA and the Transaction are supported by the Mastermind Entities current and former secured creditors.<sup>59</sup>

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<sup>56</sup> *Bloom Lake, g.p.l., (Re)*, 2015 QCCS 1920 at para. 28, BOA, Tab 1.

<sup>57</sup> Third Affidavit at [para. 40](#), MR, Tab 2, p. 32.

<sup>58</sup> Third Affidavit at [para. 41](#), MR, Tab 2, p. 32; Second Report at [s. 8.1\(ii\)](#).

<sup>59</sup> Third Affidavit at [paras. 41, 68](#), MR, Tab 2, pp. 32, 43; Second Report at [s. 8.1](#).

(c) ***The Monitor believes that the Transaction is more beneficial to creditors than a sale or disposition under bankruptcy***

38. In the Second Report, the Monitor expressed that the Transaction is substantially better for all stakeholders than what would be achieved in a full liquidation or bankruptcy, which is a view shared by the Mastermind Entities.<sup>60</sup> The Transaction represents the only option in the circumstances that preserves the business as a going concern, satisfying the policy objectives of the CCAA.

(d) ***The Mastermind Entities consulted their creditors and have considered the interests of all parties***

39. Mastermind LP's current and former secured creditors—CIBC and the Birch Hill Lenders<sup>61</sup>—were kept fully apprised of the Sale Process and negotiations of the Transaction as they developed and progressed.<sup>62</sup> Indeed, CIBC and the Birch Hill Lenders were directly involved in the negotiations with the Purchaser: CIBC has entered into a guarantee agreement with the principals of the Purchaser in respect of Mastermind LP's indebtedness under the Credit Facilities (the "**Guarantees**"), and the Birch Hill Lenders have assigned to the Purchaser their interests in the promissory notes issued by Mastermind LP.<sup>63</sup> Both CIBC and the Birch Hill Lenders support the APA and the Transaction.<sup>64</sup>

40. Throughout the process leading up to the execution of the APA and the

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<sup>60</sup> Third Affidavit at [para. 64](#), MR, Tab 2, p. 41. Second Report at [s. 8.1](#).

<sup>61</sup> As described above, the Birch Hill Lenders are no longer secured creditors of Mastermind LP.

<sup>62</sup> Third Affidavit at [paras. 20, 41, 68](#) MR, Tab 2, pp. 27, 32, 43; Second Report at [ss. 4.3\(i\), 8.1\(ii\)](#).

<sup>63</sup> As a result, the Birch Hill Lenders are no longer a secured creditor of Mastermind LP. Third Affidavit at [paras. 53, 66\(c\)](#), MR, Tab 2, pp. 38, 42.

<sup>64</sup> Third Affidavit at [paras. 41, 68](#), MR, Tab 2, pp. 32-33, 43. Second Report at ss. 4.3(v), [8.1\(vi\)](#).

Transaction, the Mastermind Entities not only considered the interests of their secured lenders but of *all* stakeholders in their efforts to pursue a going concern transaction.<sup>65</sup> As described in the Third Affidavit, the Mastermind Entities obtained the Court's approval on November 30, 2023 to conduct a liquidation sale in certain of their stores and other locations for the benefit of their creditors (the "**Liquidation Sale**").<sup>66</sup> Importantly, Mastermind LP retained the flexibility to conduct the Liquidation Sale at some or all of their retail stores.<sup>67</sup> This flexibility allowed them to continue to pursue a going concern sale while also generating much-needed liquidity during the CCAA process.

**(e) *The proposed Transaction will have a positive effect on the creditors and other interested parties***

41. The Transaction will benefit the whole "economic community" by continuing the operation of at least 43 Purchased Stores, providing jobs to at least 85% of the employees at the Purchased Stores on substantially similar terms, generating business for various suppliers, maintaining relationships with landlords and customers of Mastermind LP and maintaining competition in the industry.<sup>68</sup> The Transaction allows the Mastermind Entities to avoid the many unfortunate consequences of liquidation, including loss of employment for all of Mastermind LP's employees during the holiday season.

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<sup>65</sup> Third Affidavit at [paras. 17, 41, 63-64](#), MR, Tab 2, pp. 26, 33, 41.

<sup>66</sup> Third Affidavit at [paras. 10-11](#), MR, Tab 2, p. 24; [Liquidation Sale Approval Order dated November 30, 2023](#), Exhibit F to the Third Affidavit, MR, Tab 2F.

<sup>67</sup> Third Affidavit at para. [48](#), MR, Tab 2, p. 35; Affidavit #2 of Lucio Milanovich sworn November 29, 2023 ("**Second Affidavit**") at [para. 21](#), Exhibit B to the Third Affidavit, MR, Tab 2B, p. 105.

<sup>68</sup> *Nortel Networks Corp. et al. (Re)*, 2009 CarswellOnt 4467 (Ont. S.C.J. [Commercial List]) at para. 49, BOA, Tab 17; *Brainhunter Inc. (Re)*, 2009 CarswellOnt 7627 (Ont. S.C.J. [Commercial List]) at paras. 13-17, BOA, Tab 2; Third Affidavit at [para. 14](#), MR, Tab 2, p. 25; APA (redacted in part), [ss. 2.1, 2.5, 4.1](#), Exhibit G to the Third Affidavit, MR, Tab 2G, pp. 243-244, 249-250; Second Report at [ss. 4.2, 4.3\(ii\), 4.10, 8.1\(i\)](#).



42. Moreover, the Transaction positions the “Mastermind Toys” brand to thrive as Messrs. Mimran, Rochetti and Lui, the principals of the Purchaser, have a proven track record of success in the retail industry through founding or acquiring a number of retail companies in the past, including Club Monaco and Joe Fresh.<sup>69</sup>

43. The Purchaser has demonstrated its commitment to closing: (i) it has provided a sizeable deposit; (ii) the Transaction is not conditional on financing or governmental or regulatory approvals; and (iii) each of the principals of the Purchaser has provided the Guarantees described in paragraph 39 above.<sup>70</sup> These factors will provide comfort to the Mastermind Entities’ stakeholders that that business will be continuing with minimal disruption.

44. Significantly, none of the stakeholders of the Mastermind Entities has objected to the sale.<sup>71</sup> The Monitor has expressed its view that the Transaction is substantially better for all of the Mastermind Entities’ stakeholders than any other viable option.<sup>72</sup>

**(f) *The consideration to be received for the assets is reasonable and fair, taking into account their market value, and the Mastermind Entities have made sufficient effort to obtain the best price and have not acted improvidently***

45. The consideration under the APA is fair and reasonable. The Purchase Price is the result of a rigorous process in which A&M Corporate Finance thoroughly tested the

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<sup>69</sup> Third Affidavit at [para. 65](#), MR, Tab 2, pp. 41-42.

<sup>70</sup> Third Affidavit at [para. 66](#), MR, Tab 2, p. 42.

<sup>71</sup> *Nortel Networks Corp. et al. (Re)*, 2009 CarswellOnt 4467 (Ont. S.C.J [Commercial List]) at para. 49(d), BOA, Tab 17.

<sup>72</sup> Second Report at [s. 8.1\(v\)](#); Third Affidavit at [para. 41](#), MR, Tab 2, pp. 32-33.

available market to obtain the best possible outcome for the Mastermind Entities' stakeholders in the circumstances.<sup>73</sup>

46. The Monitor agrees with the Mastermind Entities that the consideration is fair and reasonable, and there has been no suggestion that either party to the Transaction has acted improvidently.<sup>74</sup> The Transaction, including the Purchase Price, is the result of comprehensive negotiations engaged in by the Mastermind Entities' board and management exercising their business judgment to determine the most appropriate deal in the circumstances for the "Mastermind Toys" business. It is well established that absent any indication that the Mastermind Entities have acted improvidently, this Court must show deference to their business judgment.<sup>75</sup>

**B. This Court Should Grant a Sealing Order over the APA's Purchase Price and Related Terms**

47. The specific Purchase Price mechanics (the "**Pricing Mechanism**") are redacted from the APA.<sup>76</sup> The Mastermind Entities are seeking the sealing of the APA only as it relates to the Purchase Price and Pricing Mechanism, which is the result of extensive resource expenditure by the Purchaser, who considers such information proprietary and competitively sensitive.<sup>77</sup>

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<sup>73</sup> Third Affidavit at [paras. 19, 51](#), MR, Tab 2, pp. 27, 37.

<sup>74</sup> Second Report at [s. 8.1\(iv\)](#).

<sup>75</sup> *Nordstrom Canada Retail, Inc. et al. (Re)*, 2023 ONSC 4199 at paras. 19-20, BOA, Tab 16; *Royal Bank of Canada v. Soundair Corp.*, 1991 CarswellOnt 205 (Ont. C.A.) at para. 21, BOA, Tab 22; *Terrace Bay Pulp Inc. (Re)*, 2012 ONSC 4247 at paras. 51-55, BOA, Tab 29; *Stelco Inc. (Re)*, [2005] O.J. No. 729 at paras. 65-68, BOA, Tab 26; *Bloom Lake (Re)*, 2015 QCCS 1920 at para. 28, BOA, Tab 1.

<sup>76</sup> Third Affidavit at [para. 51](#), MR, Tab 2, p. 37; APA (redacted in part), [ss. 3.1-3.8](#), Exhibit G to the Third Affidavit, MR, Tab 2G, pp. 244-249.

<sup>77</sup> Third Affidavit at [paras. 69-70](#), MR, Tab 2, p. 43.

48. Section 137(2) of the *Courts of Justice Act* provides this Court with discretion to order that any document filed in a civil proceeding, including in the insolvency context, be treated as confidential, sealed, and not part of the public record.<sup>78</sup>

49. When considering whether to grant a sealing order, courts frequently apply the *Sierra Club* test, as re-framed by the Supreme Court of Canada in *Sherman Estate v. Donovan*.<sup>79</sup> The Purchase Price and the Pricing Mechanism of the APA easily meet that test since: (i) the disclosure of this information poses a serious risk to an important public interest; (ii) the order sought is necessary to prevent this risk (and reasonable alternative measures will not prevent it); and (iii) as a matter of proportionality, the benefits of the order outweigh its negative effects.<sup>80</sup>

**(a) Disclosing the Purchase Price and Pricing Mechanism poses a serious risk to the commercial interest of preserving confidential information**

50. In *Sherman Estate*, the Supreme Court of Canada recognized the “general commercial interest of preserving confidential information” as an important interest because of its public character.<sup>81</sup> To satisfy this first branch of the test, the Mastermind Entities must demonstrate that the Purchase Price and Pricing Mechanism (a) have been treated at all relevant times as confidential, (b) their disclosure, on a balance of probabilities, could reasonably harm a commercial interest, and (c) must have been of a

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<sup>78</sup> *Courts of Justice Act*, R.S.O. 1990, c. C. 43, s. 137(2).

<sup>79</sup> *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 at paras. 53-57, BOA, Tab 25; *Sherman Estate v. Donovan*, 2021 SCC 25 at para. 38, BOA, Tab 24.

<sup>80</sup> *Sherman Estate v. Donovan*, 2021 SCC 25 at para. 38, BOA, Tab 24.

<sup>81</sup> *Sherman Estate v. Donovan*, 2021 SCC 25 at para. 41, BOA, Tab 24; *DCL Corporation (Re)*, 2023 ONSC 3686 [Commercial List] at para. 45, BOA, Tab 8.

confidential nature in that they have been reasonably expected to be kept confidential.<sup>82</sup>

51. *First*, both the Purchase Price and the Pricing Mechanism were treated as confidential at all relevant times.<sup>83</sup> The parties to the APA engaged in confidential negotiations using the proprietary Pricing Mechanism. Consequently, the parties' expectations throughout the entire Sale Process and negotiations were that the Purchase Price and Pricing Mechanism would be kept confidential. Accordingly, the open court principle presents a serious risk to the important public interest of preserving, to the extent necessary, contractual obligations of confidentiality.<sup>84</sup>

52. *Second*, disclosure of the Purchase Price and Pricing Mechanism would be harmful to the broader commercial interest in preserving confidential information. Nothing is more confidential than a business' proprietary information that forms the basis for its competitive advantage. In *Ehouzou v. Manufacturers Life Insurance Company*, the Court found that information that would enable competitors of the respondent to emulate insurance products developed and marketed solely by the respondent to be proprietary information that warranted the issuance of a sealing order.<sup>85</sup>

53. Similar to the circumstances in *Ehouzou*, the Purchaser expended a great deal of

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<sup>82</sup> *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 at paras. 59-60, BOA, Tab 25; *Rogers Communications Canada Inc. v. TELUS Communications Inc.*, 2023 ONSC 5398 [Commercial List] at para. 111, BOA, Tab 21.

<sup>83</sup> As noted above, the principals of the Purchaser signed an NDA to obtain information related to the process, and all subsequent negotiations proceeded confidentially. Third Affidavit at [paras. 22, 25, 28](#), MR, Tab 2, pp. 28-29.

<sup>84</sup> *DCL Corporation (Re)*, 2023 ONSC 3686 [Commercial List] at para. 45, BOA, Tab 8.

<sup>85</sup> *Ehouzou v. Manufacturers Life Insurance Company*, 2018 QCCS 4908 [*"Ehouzou"*] at paras. 52, 54, BOA, Tab 9.

time and resources developing the Pricing Mechanism for investments in retail businesses. Disclosure of the unique Pricing Mechanism will undermine the Purchaser's competitive advantage, since it and its principals are in the business of acquiring interests in retail businesses.<sup>86</sup>

54. In addition to harming the public commercial interest in preserving confidentiality, failing to seal this information would prejudice the Purchaser by presenting the Pricing Mechanism to its competitors, free of charge. This could also deter future purchasers from entering into analogous transactions under the CCAA, since they too would run the risk of handing commercially sensitive information to their competitors. Since the ultimate policy of the CCAA is to “preserve the going concern”,<sup>87</sup> this Court should refrain from exercising its discretion in a manner that could discourage future going concern investors.

55. This Court recognizes proprietary information as a hallmark of business competition, and protecting confidentiality in such information is an important public interest.<sup>88</sup> In insolvency proceedings, courts have granted various sealing orders over commercial terms in order to preserve the competitive position of debtors, lenders, and proposed purchasers:

- (a) to protect the terms on which a debtor's assets were being sold, in *Randhawa*, this Court sealed information relating to the valuation of assets

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<sup>86</sup> Third Affidavit at [paras. 65, 70](#), MR, Tab 2, pp. 41-43.

<sup>87</sup> *Nortel Networks Corp. et al. (Re)*, 2009 CarswellOnt 4467 (Ont. Sup. Ct. J. [Commercial List]) at para. 32, BOA, Tab 17; *Residential Warranty Co. of Canada Inc. (Re)*, 2006 ABQB 236 (Alta. Q.B.) at para. 78, BOA, Tab 20; *Clothing for Modern Times Ltd. (Re)*, 2011 ONSC 7522 [Commercial List] at para. 12, BOA, Tab 6.

<sup>88</sup> *Mediatube Corp. v. Bell Canada*, 2022 ONSC 342 at para. 34, BOA, Tab 13; *Lewis v. Uber Canada Inc.*, 2023 ONSC 5134 at para. 16, BOA, Tab 12.

that an auctioneer was preparing to auction off. The Court acknowledged that the serious public interest at risk was the interest of the stakeholders to receive as much for their assets as possible and that if such information were disclosed, the value received by shareholders in any subsequent transaction could be impaired;<sup>89</sup>

- (b) to protect information regarding a debtor's competitive position, in *U.S. Steel*, this Court sealed a confidential exhibit that contained conversion price information, supplied quantities and analysis of overall financial benefit to the debtor under a conversion agreement for coke (a coal-based fuel);<sup>90</sup>
- (c) to maintain the confidentiality of a pricing mechanism developed by a going concern purchaser, in *International Fitness*, the Court of Queen's Bench of Alberta sealed the purchase price and terms relating to determining the final purchase price;<sup>91</sup> and
- (d) to avoid any competitive disadvantage to post-CCAA filing lenders and the going concern purchaser in *Mountain Equipment Co-operative*, the Supreme Court of British Columbia sealed commercially sensitive information contained in an updated credit agreement, interim financing

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<sup>89</sup> *Randhawa v. Randhawa*, 2021 ONSC 7065 [Commercial List] at para 3, BOA, Tab 19.

<sup>90</sup> *U.S. Steel Canada Inc. (Re)*, 2014 ONSC 7121 [Commercial List] at para. 9, BOA, Tab 30; *U.S. Steel Canada Inc. (Re)*, Affidavit of William E. Aziz sworn December 4, 2014 (Court File No. CV-14-10695-00CL) at para. 23, BOA, Tab 30.

<sup>91</sup> *International Fitness Holdings Inc. et al. (Re)*, Sealing Order granted May 27, 2021 (Court File No. B201 731795), at para. 2, BOA, Tab 11; *International Fitness Holdings Inc. et al. (Re)*, Bench Brief of the Applicants dated May 27, 2021 (Court File No. B201 731795) at para. 16(a), BOA, Tab 11.

agreement and sale agreement. The debtor company, MEC, submitted that disclosure of such information would cause significant and undue adverse effects on its business, the position of its lenders and the going concern purchaser in each of their respective industries, which warranted the sealing order.<sup>92</sup>

These cases make clear that in insolvency proceedings, it is irrelevant whose competitive interest may be harmed; rather, the important factor is that a competitive interest in play as a result of the CCAA transaction must be protected. Here, the Purchase Price and the Pricing Mechanism are worthy of protection because they are commercial terms on which the Mastermind Entities' assets are being sold that, if disclosed, would disadvantage the Purchaser's competitive position and harm the public interest in the confidentiality of key contractual terms.

56. *Third*, the support of the Monitor in a request for a sealing order is significant.<sup>93</sup> Here, the Monitor agrees with the Mastermind Entities and the Purchaser that information relating to the Purchase Price and the Pricing Mechanism should be redacted, and this Court should give weight to the Monitor's professional assessment.

**(i) Sealing the APA is the only way to prevent disclosure of the parties' sensitive commercial information**

57. There are no available alternatives to redacting the Purchase Price and the Pricing Mechanism that would protect these important interests. This motion seeks this Court's

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<sup>92</sup> *Mountain Equipment Co-operative et al. (Re)*, Sealing Order granted September 15, 2020 (Court File No. S209201) at para. 2, BOA, Tab 14; *Mountain Equipment Co-operative et al. (Re)*, Notice of Application dated September 14, 2020 (Court File No. S209291) at paras. 4-5, BOA, Tab 14.

<sup>93</sup> *Crystallex International Corporation (Re)*, 2020 ONSC 3434 at para. 10, BOA, Tab 7.

approval of the APA, and consequently, the APA must be disclosed to the Court for such relief to be granted. Accordingly, the sealing order is the only way in which the Mastermind Entities can protect the public interests at stake.

**(ii) The benefits of sealing the Purchase Price and Pricing Mechanism outweigh any deleterious effects**

58. Finally, the benefits of a sealing order far outweigh any deleterious effects of the limited, targeted redactions proposed by the Mastermind Entities. Importantly, the Mastermind Entities have disclosed all of the terms of the APA that they believe are relevant to their stakeholders, including information concerning the minimum number of Purchased Stores, the treatment of employees and an explanation that the Purchase Price will provide cash consideration that is sufficient to ensure full repayment to the Mastermind Entities' senior secured creditor, CIBC,<sup>94</sup> and payment of the Priority Payables. Disclosure of the Purchase Price and the Pricing Mechanism would provide no additional information of value to the stakeholders in this CCAA proceeding.

59. Conversely, public disclosure would directly harm the Purchaser's commercial interests by revealing proprietary business information that the Purchaser has invested considerable resources to develop.<sup>95</sup> Disclosure would also have two additional broader negative consequences that could have a chilling effect on investors' willingness to engage in court-supervised transactions under the CCAA. First, disclosure would harm the sanctity of contract because highly sensitive contractual provisions, which are both

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<sup>94</sup> As described in [paragraph 53](#) of the Third Affidavit, on December 1, 2023, the Birch Hill Lenders assigned their interests in the Birch Hill Notes to the Purchaser with the result that they are not secured lenders of the Mastermind Entities from and after that date (see MR, Tab 2, p. 38).

<sup>95</sup> *Nortel Networks Corp. et al. (Re)*, 2009 CarswellOnt 4467 (Ont. S.C.J. [Commercial List]) at para. 57, BOA, Tab 17; Third Affidavit at [para. 70](#), MR, Tab 2, p. 43.

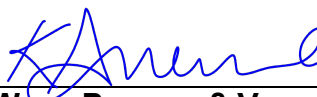


beneficial to all parties and negotiated with an expectation of confidentiality, would be exposed. Second, investors would no longer be able to transact with the certainty that their proprietary business information will remain confidential. These two broader negative consequences may deter future investors from engaging in court-supervised transactions under the CCAA in an effort to preserve the confidentiality of negotiated agreements and proprietary business information.

#### **PART IV – ORDER SOUGHT**

60. For the above reasons, the Mastermind Entities respectfully request that this Court grant the Approval and Vesting Order and the Sealing Order in the forms requested.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 11th day of December, 2023.



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**SCHEDULE A  
LIST OF AUTHORITIES**

**Case Law**

1. *Bloom Lake, g.p.l. (Re)*, 2015 QCCS 1920.
2. *Brainhunter Inc. (Re)*, 2009 CarswellOnt 7627 (Ont. S.C.J. [Commercial List]).
3. *Canwest Global Communications Corp. (Re)*, 2010 ONSC 2870 (Ont. S.C.J. [Commercial List]).
4. *CCM Master Qualified Fund Ltd. v. blutip Power Technologies Ltd.*, 2012 ONSC 1750 [Commercial List].
5. *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60
6. *Clothing for Modern Times Ltd. (Re)*, 2011 ONSC 7522 [Commercial List].
7. *Crystallex International Corporation (Re)*, 2020 ONSC 3434 [Commercial List].
8. *DCL Corporation (Re)*, 2023 ONSC 3686 [Commercial List].
9. *Ehouzou v. Manufacturers Life Insurance Company*, 2018 QCCS 4908.
10. *Fire & Flower Holdings Corp., et al.*, 2023 ONSC 4048 [Commercial List].
11. *International Fitness Holdings Inc. et al. (Re)*, Sealing Order granted May 27, 2021 (Court File No. B201-731795).
12. *Lewis v. Uber Canada Inc.*, 2023 ONSC 5134.
13. *Mediatube Corp. v. Bell Canada*, 2022 ONSC 342.
14. *Mountain Equipment Co-operative et al. (Re)*, Sealing Order granted September 15, 2020 (Court File No. S209201).
15. *Nelson Education Ltd. (Re)*, 2015 ONSC 5557 [Commercial List].
16. *Nordstrom Canada Retail, Inc. et al. (Re)*, 2023 ONSC 4199.
17. *Nortel Networks Corp. et al. (Re)*, 2009 CarswellOnt 4467 (Ont. S.C.J.) [Commercial List].
18. *PCAS Patient Care Automation Services Inc. (Re)*, 2012 ONSC 2840 [Commercial List].
19. *Randhawa v. Randhawa*, 2021 ONSC 7065 [Commercial List].
20. *Residential Warranty Co. of Canada Inc. (Re)*, 2006 ABQB 236.

21. *Rogers Communications Canada Inc. v. TELUS Communications Inc.*, 2023 ONSC 5398 [Commercial List].
22. *Royal Bank of Canada v. Soundair Corp.*, 1991 CarswellOnt 205 (Ont. C.A.).
23. *Sanjel Corp. (Re)*, 2016 ABQB 257.
24. *Sherman Estate v. Donovan*, 2021 SCC 25.
25. *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41.
26. *Stelco Inc. (Re)*, [2005] O.J. No. 729.
27. *Target Canada Co. (Re)*, 2015 ONSC 2066 [Commercial List].
28. *Target Canada Co. (Re)*, 2015 ONSC 846 [Commercial List].
29. *Terrace Bay Pulp Inc. (Re)*, 2012 ONSC 4247.
30. *U.S. Steel Canada Inc. (Re)*, 2014 ONSC 7121 [Commercial List].
31. *Validus Power Corp. et al. and Macquarie Equipment Finance Limited*, 2023 ONSC 6367 [Commercial List].

## **Legislation**

1. *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36.
2. *Courts of Justice Act*, R.S.O. 1990, c. C.43.

**SCHEDULE B**  
**TEXT OF STATUTES, REGULATIONS & BY-LAWS**

**1. *Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36***

36.

36(1) Restriction on disposition of business assets

A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

36(2) Notice to creditors

A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

36(3) Factors to be considered

In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

36(6) Assets may be disposed of free and clear

The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

**2. *Courts of Justice Act, R.S.O. 1990, c. C.43.***

137(2) Sealing documents

A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

Applicant

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

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