

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.

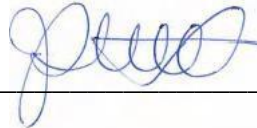
57. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of any of the Mastermind Entities, the Business or the Property.

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.

A handwritten signature in blue ink, appearing to be "J. H. H.", is written over a horizontal line.